

No. 15917

United States
Court of Appeals
for the Ninth Circuit

R. B. FRASER, R. B. FRASER, INC., a Corpora-
tion; R. B. FRASER, JR.; FRASER LIVE-
STOCK COMPANY, a Corporation, and
CHARLES FRASER,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Montana.

FILED

MAY 14 1958

PAUL P. O'BRIEN, CLERK

No. 15917

United States
Court of Appeals
for the Ninth Circuit

R. B. FRASER, R. B. FRASER, INC., a Corporation;
R. B. FRASER, JR.; FRASER LIVE-STOCK COMPANY, a Corporation, and
CHARLES FRASER,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Montana.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer, Amended	69
Appeal:	
Bond on	111
Clerk's Certificate to Record on.....	328
Notice of, Defendants'.....	111
Statement of Points on.....	113
Attorneys, Names and Addresses of.....	1
Clerk's Certificate to Record on Appeal.....	328
Complaint	3
Findings of Fact and Conclusions of Law....	73
Judgment	108
Key to Brand References.....	2
Motion to Dismiss, Filed January 13, 1956....	39
Motion for Order Extending Time to File Record and Docket Cause.....	117
Motion for Preliminary Injunction.....	40
Affidavits of:	
Cheney, Wm. G.....	61
Cormier, Clem R.....	60

INDEX	PAGE
Cormier, Joe A.....	57
Dosdall, Orië E.....	56
Mast, Joseph B.; Landon, Urban; and Buxton, Dale J.....	64
Powers, Gordon I.....	41
Stanton, Clark C.....	54
Notice of Appeal, Defendants'.....	111
Opinion	84
Order of Court, Filed May 26, 1956.....	66
Order Extending Time to File Record and Docket Cause	117
Order of Court Granting Preliminary Injunction	67
Pretrial Order	71
Statement of Points on Appeal.....	113
Supersedeas Bond on Appeal.....	111
Transcript of Proceedings.....	118
Witnesses, Defendant's:	
Fraser, R. B.	
—direct	271
—cross	291
Taylor, Park	
—direct	315
—cross	317

INDEX

PAGE

Witnesses, Defendant's—(Continued):

Yellowtail, Robert	
—direct	306

Witnesses, Plaintiff's:

Buxton, Dale J.	
—direct	136
—cross	138

Carter, Thomas	
—direct	318

Cormier, Clem	
—direct	221
—cross	225

Cormier, Joe	
—direct	232, 253
—voir dire	234
—cross	246, 254

Dosdall, Orié	
—direct	254
—cross	258

Field, Donald F.	
—direct	265

Jaffrey, Margaret	
—direct	320
—cross	322

Witnesses, Plaintiff's—(Continued):

Landon, Urban

—direct	120
—cross	128
—by the court.....	132
—redirect	133
—recross	134

Powers, Gordon

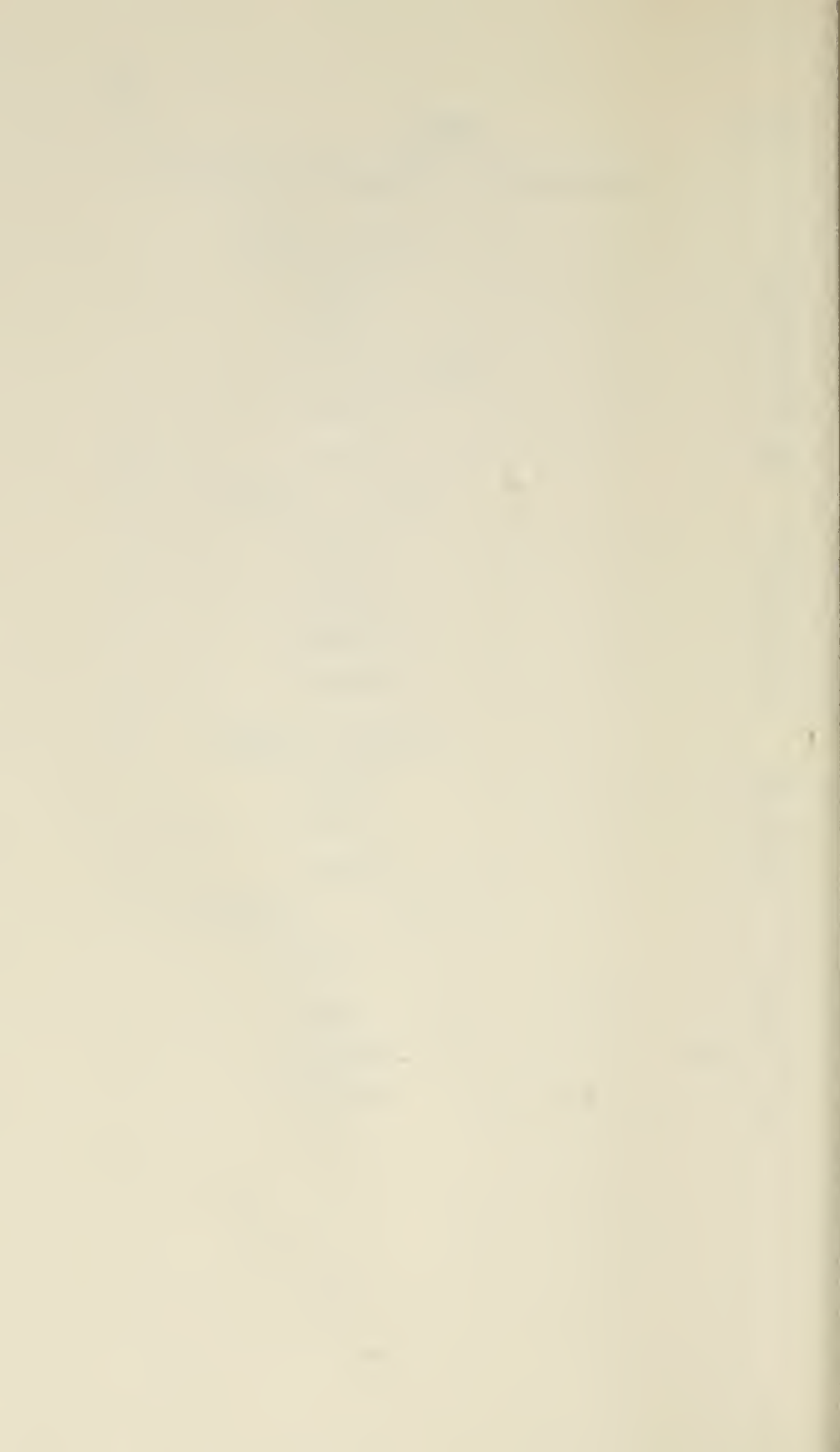
—direct	143
—cross	192
—redirect	216
—recross	218

Stanton, Clark C.

—direct	259
—cross	262
—redirect	265

Westberg, Leslie W.

—direct	139
—cross	141
—redirect	142, 143
—recross	142



NAMES AND ADDRESSES OF ATTORNEYS

MESSRS. KURTH, CONNER & JONES,
Midland National Bank Building,
Billings, Montana,
Attorneys for Appellants.

MR. KREST CYR,
United States District Attorney,
Butte, Montana ;

MR. DALE F. GALLES,
Assistant United States District Attorney,
Butte, Montana,
Attorneys for Appellee.



KEY TO BRAND REFERENCES

Clerk's Note:

Throughout this transcript particularly in the motion of the United States for Preliminary Injunction and in the reporter's transcript of testimony there are references to brand marks on cattle or horses.

For economy we are adopting the following references to be inserted in the transcript in lieu of actually drawing the brand marks; such numerals may be translated into the respective brands by a glance at the following table:

used to designate this brand	V ^c [13]	is used to designate this brand	FL
used to designate this brand	□ [14]	is used to designate this brand	XA
used to designate this brand	⊙ [15]	is used to designate this brand	H
used to designate this brand	⊕ [16]	is used to designate this brand	X
used to designate this brand	XL [17]	is used to designate this brand	R
used to designate this brand	JV [18]	is used to designate this brand	Z
used to designate this brand	⋈ [19]	is used to designate this brand	L
used to designate this brand	A [20]	is used to designate this brand	Δ
used to designate this brand	⋈ [21]	is used to designate this brand	L
used to designate this brand	⊕ [22]	is used to designate this brand	⇒
used to designate this brand	DO		
used to designate this brand	RF		

In the United States District Court for the District
of Montana, Billings Division

Civil No. 1804

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. B. FRASER, R. B. FRASER, INC., a Corpo-
ration; R. B. FRASER, JR., FRASER LIVE-
STOCK CO., a Corporation, and CHARLES
FRASER, Also Known as CHAS. FRASER,

Defendants.

COMPLAINT

First Count

For its first count, plaintiff complains and alleges:

I.

Plaintiff brings this action in its sovereign capac-
ity for the use and benefit of the Indians of the Crow
Indian Reservation and the Crow Indian Tribe,
wherefore this Court has jurisdiction of the action.

II.

The Crow Indian Reservation is and at all times
herein stated was a duly established Indian reserva-
tion under the laws of the United States, located
within the State and District of Montana and within
the Billings Division of said District, a plat of which
is attached hereto as "Exhibit A" and made a part

hereof; that except for certain isolated tracts of land for which patents have been issued by plaintiff herein, the title to said lands in said reservation is and at all times herein stated was in the plaintiff in trust for the Crow Indian Tribe or certain members thereof; that said land at all times herein stated was and now is managed and supervised by the plaintiff through its Agency created for that purpose, to wit, the Bureau of Indian Affairs.

III.

The defendant R. B. Fraser is and at all times mentioned herein was a citizen and resident of the State and District of Montana and within the Billings Division of the said District, and is and was the owner of lands and livestock and the lessee or grazing permittee of other lands, all of which are within the exterior boundaries of the Crow Indian Reservation. That defendant R. B. Fraser, Jr., is and was the owner of certain land within the exterior boundaries of the Crow Indian Reservation and is the son of defendant R. B. Fraser, and a stockholder in defendant R. B. Fraser, Inc., a corporation, being associated with defendant R. B. Fraser in the livestock business. That defendant Charles Fraser, also known as Chas. Fraser, is the brother of R. B. Fraser and associated with him in the livestock business on the Crow Indian Reservation. That defendants R. B. Fraser, Inc. and Fraser Livestock Co. are corporations organized and existing under the laws of the State of Montana in which defendants R. B. Fraser and R. B. Fraser, Jr., are stockholders.

IV.

Except for said patented lands, all other lands in the Crow Indian Reservation are and at all times herein stated were Indian trust lands, owned beneficially either by The Crow Tribe or by allottees who are members of said Tribe, or heirs of such members, and the right to the exclusive occupation and enjoyment thereof was and is in the said Indians subject only to duly approved leases and grazing permits.

V.

At all times mentioned herein there existed a duly promulgated and existing regulation of the Department of the Interior of the United States, (25 C.F.R., 71.21) which provided, in accordance with and supplementary to 25 U. S. Code 179, as follows:

“§71.21 Trespass. The owner of any livestock grazing in trespass on restricted Indian lands is liable to a penalty of \$1 per head for each animal thereof together with the reasonable value of the forage consumed and damages to property injured or destroyed.”

The following acts are prohibited:

“(a) The grazing upon or driving across any restricted Indian lands of any livestock without an approved grazing or crossing permit, except such Indian livestock as may be exempt from permit.”

“(b) Allowing livestock not exempt from permit to drift and graze on restricted Indian lands without an approved permit.”

VI.

On or about December 31, 1943, sheep owned by said defendants or some of them and managed and herded by them or their agents and servants, to wit, 2,285 sheep, were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which the said defendants did not have a lease, permit, license or privilege whatever.

Said animals were driven, herded, drifted, grazed and allowed to be driven, herded, drifted and grazed upon plaintiff's said lands wrongfully, wilfully and without consent of the plaintiff or the Indian owners thereof, whereby under 25 U. S. Code 179 and Regulations 71.21 above set forth, a penalty of \$1.00 per head, or a total of \$2,285.00 was incurred, for which the plaintiff invokes the said law and regulations.

Second Count

For its second count, plaintiff reiterates and restates all that is alleged in paragraphs I, II, III, IV and V of the first count herein, and in addition thereto complains and alleges:

I.

On or about February 13, 1952, cattle owned by said defendants or some of them and managed and herded by them or their agents and servants, to wit, 82 cows and 2 steers were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which the said defendants did not have a lease, permit, license or privilege whatever.

Said animals were driven, herded, drifted, grazed and allowed to be driven, herded, drifted and grazed upon plaintiff's said lands wrongfully, wilfully and without consent of the plaintiff or the Indian owners thereof, whereby under 25 U. S. Code 179 and Regulation 71.21 above set forth, a penalty of \$1.00 per head, or a total of \$84.00 was incurred, for which the plaintiff invokes the said law and regulations.

Third Count

For its third count, plaintiff reiterates and restates all that is alleged in paragraphs I, II, III, IV and V of the first count herein, and in addition thereto complains and alleges:

I.

On or about January 5, 1955, cattle owned by said defendants or some of them and managed and herded by them or their agents and servants, to wit, 42 cattle were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which the said defendants did not have a lease, permit, license or privilege whatever.

Said animals were driven, herded, drifted, grazed and allowed to be driven, herded, drifted and grazed upon plaintiff's said lands wrongfully, wilfully and without consent of the plaintiff or the Indian owners thereof, whereby under 25 U. S. Code 179 and Regulation 71.21 above set forth, a penalty of \$1.00 per head, or a total of \$42.00 was incurred, for which the plaintiff invokes the said law and regulations.

Fourth Count

For its fourth count, plaintiff reiterates and restates all that is alleged in paragraphs I, II, III, IV and V of the first count herein, and in addition thereto complains and alleges:

I.

On or about July 8, 1955, horses and mules owned by said defendants or some of them and managed and herded by them or their agents and servants, to wit, 18 horses and 3 mules were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which the said defendants did not have a lease, permit, license or privilege whatever.

Said animals were driven, herded, drifted, grazed and allowed to be driven, herded, drifted and grazed upon plaintiff's said lands wrongfully, wilfully and without consent of the plaintiff or the Indian owners thereof, whereby under 25 U. S. Code 179 and Regulation 71.21 above set forth, a penalty of \$1.00 per head, or a total of \$21.00 was incurred, for which the plaintiff invokes the said law and regulations.

Fifth Count

For its fifth count, plaintiff reiterates and restates all that is alleged in paragraphs I, II, III, IV and V of the first count herein, and in addition thereto complains and alleges:

I.

On or about July 28, 1955, cattle owned by said defendants or some of them and managed and herded by them or their agents and servants, to wit, 8 cows and 3 calves were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which the said defendants did not have a lease, permit, license or privilege whatever.

Said animals were driven, herded, drifted, grazed and allowed to be driven, herded, drifted and grazed upon plaintiff's said lands wrongfully, wilfully and without consent of the plaintiff or the Indian owners thereof, whereby under 25 U. S. Code 179 and Regulation 71.21 above set forth, a penalty of \$1.00 per head, or a total of \$11.00 was incurred, for which the plaintiff invokes the said law and regulations.

Sixth Count

For its sixth count, plaintiff reiterates and restates all that is alleged in paragraphs I, II, III, IV and V of the first count herein, and in addition thereto complains and alleges:

I.

From time to time over a period of many years from 1943 to the filing of this Complaint, said defendants or some of them have driven, caused to be driven, drifted and allowed to drift, or herded upon the lands of the Crow Indian Reservation upon which they held no valid lease or grazing permit, large numbers of sheep, cattle and horses causing

said livestock to graze and pasture on said lands and to eat and destroy the grasses and other forage and herbage growing thereon, and to over-graze said lands. The driving, drifting and herding of said livestock was done by the defendants knowingly, wilfully and without the consent either of the Indians affected thereby or the Superintendent of said Reservation, and in defiance of the plaintiff and its officers and employees having the supervision and management of said lands. The said defendants further threaten to continue to perform said wrongful acts, and will if not permanently enjoined by this Court, repeat the same and persist in unlawfully causing such livestock to trespass on plaintiff's lands above described, causing financial damage to said Tribe, the persons composing the said Tribe, and irreparable damage and injury to the inheritance of said lands.

II.

In addition to the trespasses alleged in the first five counts herein, said defendants or some of them or their agents and servants, drove, herded, drifted and grazed or caused or permitted to be driven, herded, drifted and grazed upon Indian trust land within the Crow Indian Reservation and upon which said defendants had no permit, lease or privilege whatever, certain livestock as follows:

June 12, 1945—821 sheep.

January 28, 1952—300 cattle.

January 30, 1952—55 cattle.

February 4, 1952—73 cattle.

December 15, 1955—90 cattle.

III.

Defendants have repeatedly been requested by plaintiff to remove their trespassing livestock from said lands, but defendants have repeatedly caused and permitted such trespasses to continue, following a calculated plan or design to use said lands without payment therefor. Damage has resulted therefrom not capable of exact computation for the reason that the location is remote from available personnel to police said grazing lands, and many trespasses have occurred which did not afford opportunity to count the animals involved. A multiplicity of actions would be required to recover damages for each transaction. By reason of the facts hereinabove stated in this paragraph and in paragraph I in this count, the plaintiff has no plain, speedy or adequate remedy at law, nor has it any remedy except through the equitable powers of this Court.

Seventh Count

For its seventh Count, plaintiff reiterates and restates all that is alleged in paragraph I of the first count herein, and in addition thereto complains and alleges:

I.

The Crow Indian Reservation is and at all times herein stated was a duly established Indian Reservation under the laws of the United States and treaties ratified by the United States, the title to which said lands is and was in the plaintiff in trust for said Indians, and which said lands at all times

were and now are managed and supervised by the plaintiff through its Agency created for that purpose, to wit, the Bureau of Indian Affairs. Said lands are all within the State and District of Montana and within the Billings Division of said District.

II.

The defendant, R. B. Fraser, is and at all times mentioned herein was a citizen and resident of the State and District of Montana and within the Billings Division of said District, and said defendant is the grazing permittee named in Exhibit B dated November 17, 1950, which Exhibit B was and is modified by Exhibit C dated February 23, 1952, both of which Exhibit B and Exhibit C are hereto attached and made a part hereof, together with the stipulations and schedules attached to Exhibit B.

III.

The lands described in Exhibit B and as modified by Exhibit C are and at all times herein stated were Indian trust lands, owned beneficially either by the Crow Tribe or by allottees who are members of said Tribe, or heirs of such members, and the right to the exclusive occupation and enjoyment thereof was in said Indians subject only to duly approved grazing permits.

IV.

That by the terms of Exhibit B the defendant, R. B. Fraser, was granted grazing privileges for 83 head of cattle for each grazing season and that by the terms of Exhibit C said permit was modified

by reducing the number of cattle from 83 to 82 per grazing season during the life of said permit. It is further provided by "Range Control Stipulations" attached to said Exhibit B that if the number of livestock authorized by the permit is exceeded, without previous authority, the permittee will be required to pay in addition to the regular charges, the penalty equal to 50% thereof for such excess stock.

V.

That on or about the 24th day of May, 1954, defendant R. B. Fraser caused to be driven and herded upon Range Unit No. 19 described in said Exhibit B 182 head of cattle and 32 head of horses, which under the terms of said permit constituted 107 cow units in excess of the number authorized and permitted; that demand was made upon the defendant to pay the penalty agreed to be paid for such overstocking in the sum of \$2,693.19; and that defendant has failed and refused to pay said sum or any part thereof.

VI.

That a portion of the foregoing penalties and grazing fees were paid by the forfeiture of a bond posted by defendant R. B. Fraser in connection with Exhibit B and that said defendant should be credited with the sum of \$687.51.

Eighth Count

For its eighth count, plaintiff reiterates and restates all that is alleged in paragraph I of the first

count and paragraphs I, II, III and IV of the seventh count, and in addition thereto complains and alleges:

I.

That on or about the 4th day of November, 1954, defendant R. B. Fraser caused to be driven and herded upon Range Unit No. 19, described in said Exhibit B, 196 head of cattle and 17 head of horses, which under the terms of said permit constituted 98 cow units in excess of the number authorized and permitted; that demand was made upon the defendant to pay the penalty agreed to be paid for such overstocking in the sum of \$2,466.66; and that defendant has failed and refused to pay said sum of any part thereof.

Ninth Count

For its ninth count, plaintiff reiterates and restates all that is alleged in paragraph I of the first count herein, and paragraphs I, II, III and IV of the seventh count herein, and in addition thereto complains and alleges:

That by the terms of Exhibit B hereto attached and by reference made a part hereof, defendant R. B. Fraser agreed to pay grazing fees set forth in said Exhibit B in advance; that said grazing fees were not paid by defendant R. B. Fraser in advance on September 1, 1954, as required by said Exhibit B and on December 31, 1954, said grazing permit was cancelled by the Bureau of Indian Affairs; that prior to the effective date of said cancella-

tion, the grazing fees for the month of December, 1954, were due and payable in the sum of \$114.64, for which demand was made upon said defendant and he has failed and refused to pay said sum or any part thereof.

Wherefore, Plaintiff demands judgment against defendants as follows:

1. For the sum of \$2,285.00 as a penalty prescribed by statute for the trespass of livestock grazing on restricted Indian lands, together with interest thereon at the rate of 6% per annum from December 31, 1943.

2. For the sum of \$84.00 as a penalty prescribed by statute for the trespass of livestock grazing on restricted Indian lands, together with interest thereon at the rate of 6% from February 13, 1952.

3. For the sum of \$42.00 as a penalty prescribed by statute for the trespass of livestock grazing on restricted Indian lands, together with interest thereon at the rate of 6% per annum from January 5, 1955.

4. For the sum of \$21.00 as a penalty prescribed by statute for the trespass of livestock grazing on restricted Indian lands, together with interest thereon at the rate of 6% per annum from July 8, 1955.

by statute for the trespass of livestock grazing on re-

5. For the sum of \$11.00 as a penalty prescribed

stricted Indian lands, together with interest thereon at the rate of 6% per annum from July 28, 1955.

6. For a temporary injunction against the above-named defendants, and each of them, enjoining them or their agents from driving, drifting, allowing to drift, herding, or conveying any livestock whatsoever, on or upon, or permitting the same to be driven, drifted, or allowed to drift, herded, or conveyed, or pastured, grazed, or fed on or upon any of the lands and premises within the exterior boundaries of the Crow Indian Reservation, or any part thereof, during the pendency of this action, save upon any lands and premises lawfully within the possession of said defendants; and that upon final hearing said injunction be made permanent and perpetual; and that the said defendants be required to show cause, if any they have, why an injunction pendente lite should not be issued to enjoin them or their agents from driving, drifting, allowing to drift, herding, or conveying any livestock whatsoever, on or upon, or permitting the same to be driven, herded, drifted, or allowed to drift, or conveyed, pastured, grazed, or fed, on or upon any of the lands and premises within the exterior boundaries of the Crow Indian Reservation, or any part thereof, or otherwise interfering with the possession, use and enjoyment of said lands and premises by the plaintiff and its Indian wards.

7. For the sum of \$2,693.19 as a penalty set forth in the "Range Control Stipulations" attached to Exhibit B, together with interest thereon at the

rate of 6% per annum from May 25, 1954, provided that the sum of \$687.51 shall be credited on the foregoing sum as set forth in this Complaint.

8. For the sum of \$2,466.66 as a penalty set forth in the "Range Control Stipulations" attached to Exhibit B, together with interest thereon at the rate of 6% per annum from November 4, 1954.

9. For the sum of \$114.64 as grazing fees for the year 1954, together with interest thereon at the rate of 6% per annum from December 31, 1954.

10. For such other and further relief as may seem equitable.

KREST CYR,

United States Attorney for the
District of Montana;

/s/ DALE F. GALLES,

Assistant United States Attorney for the District of
Montana, Attorneys for Plaintiff.

5-512
Approved by the Secretary of
the Interior June 4, 1931
(Revised Nov. 2, 1936,
Nov. 14, 1942)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Contract No. I-23- Ind-8615

Execution Fee, \$ 18.00

GRAZING PERMIT

WRITE ALL NAMES IN FULL)

COPY

Crow Indian

(Agency)

Crow Indian

(Reservation)

Authority of law and under the regulations (25 CFR 71) prescribed by the Secretary of the Interior,

R. B. Fraser

(Name of permittee)

of 106 Clark Ave., Billings, Montana

(Post-office address)

Permittee is hereby granted permission to hold and graze livestock on the Crow

reservation for a period beginning December 1, 1950, and terminating not later than November 30

1955, on range unit No. 19, including all unreserved tribal land as authorized by

(Number of name)

Crow Tribe and all unfenced Indian allotments on which authority

to grant grazing privileges have been obtained, a schedule of which is attached hereto and made a part of this permit, and covering livestock in kind and numbers, for the grazing season, and at the rate per head as shown in the following schedule, subject to the payment of all fees and full compliance with the attached range control stipulations which are made a part of this permit:

YEAR	NUMBER OF HEAD	KIND OF STOCK	GRAZING SEASON		RATE PER HEAD (Season)	AMOUNT	DATE PAYABLE	
			From—	To—			One-half	One-half
51 to 55 Incl.	83	cattle	yearlong		16.778	1,392.61	First annual payment due on or before Dec. 1, 1955. Each payment thereafter due September 1 of each year.	

This permit is issued with the understanding that a total of 124 head of cattle will be grazed

on this unit, the carrying capacity of the privately owned or leased range lands of the unit being 41 head of

cattle, evidence of the right to the use of which is recorded with the Superintendent, a schedule of which is attached hereto and made a part of this permit. It is further understood and agreed that if the permittee allows a greater number of livestock than the total number herein stipulated to graze upon this range unit of which the Indian range is a part, during the period this permit is in effect, this on-and-off clause shall immediately become null and void and the stock excess of the number upon which fees are paid to the Indians shall be considered as in a state of trespass and treated accordingly. (Delete the above paragraph if not applicable.)

Unless authorized by the Superintendent of the Agency in writing, only livestock bearing the brands and marks herein shown shall be grazed under authority of this permit:

CATTLE BRANDED

EAR MARK

HORSE BRANDS

SHEEP BRANDED

EAR MARK



In consideration of the above privileges the permittee agrees to pay to the Superintendent for the use and benefit of the Indians entitled to occupy the lands above described, the sum of money found to be due from the permittee according to the provisions of this permit (calves, colts, and lambs under 6 months of age not to be counted), and the permittee further agrees to pay the grazing fees annually or semiannually in advance. Unless the grazing fees shall be paid in advance for the full term of the permit, these payments will be guaranteed by an acceptable bond as required by the regulations (25 CFR 71.17) or any amendments thereto (with a maximum of \$25,000).

It is understood and agreed by the permittee that this permit is terminable and revocable in the discretion of the Commissioner of Indian Affairs after 30 days' written notice.

EXHIBIT B
P 79 E /

16-5850-2

It is also understood and agreed that any part of the area covered by this permit may be excluded from this range unit by the Commissioner of Indian Affairs in the exercise of his discretion, or by the transfer of title through sale of allotted land, or by the extinguishment of the Indian right of occupancy of the lands; and thereupon this permit shall cease and terminate as to the parts of the range unit thus eliminated, the number of stock stipulated shall be reduced in conformity thereto, and the payments due hereunder shall be adjusted accordingly, provided that the termination of this permit has not been due to the fault of the permittee or to a violation of the terms of this permit by or on behalf of the permittee.

The permittee hereby agrees that he and his employees will not use any part of the range unit for the sale, manufacture, storage, or drinking of intoxicants or the handling of narcotics, and neither he nor his employees will take part in immoral or any illegal practices whatever in or upon the reservation. Violation of this clause will be deemed sufficient ground for cancellation of this permit.

All livestock grazed under this permit and all other property used in connection with this permit shall be held as security for the payment of any grazing fees due and for the full performance of the agreement, and all payments due hereunder shall constitute a prior and first lien upon said livestock and other property incidental to the enjoyment of the privileges granted. The Agency office contains public records of the United States pertaining to trust Indian allotments and all persons are charged with notice and knowledge thereof. A copy of each permit must be filed promptly in the Agency Office. A copy shall be available at all times for public inspection. If the permittee so desires he may file or record a copy of this permit, at his own expense, in the proper county office.

The permittee hereby agrees to perform the range conservation practices and to construct the range improvements on Indian lands in proportion to the practices performed and improvements constructed on the non-Indian lands used in connection with the unit insofar as practicable if the unit is entered in the Agricultural Conservation Program, and to prepare and carry out future proposed programs during the life of this permit to accomplish this purpose; and the permittee further agrees to obtain permission on the proper form for construction on the Indian lands of the improvements involved in the program.

This permit shall not be assigned, sublet, or transferred without the written consent of the parties thereto and the surety.

The Superintendent and the Regional Forester shall make decisions relative to the interpretation of the terms of this permit and the range control stipulations which are attached hereto, and the terms of this permit cannot be varied in any way except as herein provided without the written approval of the parties thereto and the surety.

No Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this permit, nor any benefit that may arise therefrom, but this provision shall not be construed to extend to this permit if made with respect to a corporation or company for its general benefit.

Concurrence by the Regional Forester is necessary to make this permit effective, when required by the regulations (CFR 71.16).

Issued at the Crow Indian Agency this 17th day of November, 19 50

L. C. Lippert, /s/ L. C. Lippert [SEAL]
(Superintendent)

I accept the permit with the foregoing conditions and the attached range control stipulations.

/s/ Clark McGarry

/s/ L. E. Groh

R. E. Fraser /s/ R. E. Fraser [SEAL]
(Permittee)

Carried in DEC 20 1950, 19

Thomas L. Carter, /s/ Thomas L. Carter
Regional Forester.

Land Schedule

Unit No. 19
R. B. Fraser
Page No. 1

Al. No.	Name	Land Description	Acres	Rate	Ann. Fees
353B	Bigmountain	NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 35-1-27	200.0	.44	\$ 88.00
1803	Shoots Pretty Things Oldtail	Lots 5, 8, E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 21; Lot 1, NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 28; SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22-1-27	302.38		133.05
1811	Behind	SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36-1-27	40.0		17.60
1817	Knows His Horse	E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ Sec. 26; W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$, Sec. 25; NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35-1-27	600.0		264.00
1879	Finds His Enemies Forehead	N $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec. 27; W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ Sec. 26-1-27	640.0		281.60
1881	Jessie Forehead	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35-1-27	40.0		17.60
1921	Musktrat Goes In The Hole	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35-1-27	40.0		17.60
2097	Shuts Her Eye Among Enemy	Lots 4, 5, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; Lot 9 E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 28; W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 27; Lot 1, E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 33; NW $\frac{1}{4}$, NE $\frac{1}{4}$ Sec. 34-1-27	742.64		326.76
2176	Takes Two Lances	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35-1-27	40.0		17.60
2179	Rides Among Them	SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36-1-27	40.0		17.60
2738	George Costa	NW $\frac{1}{4}$ Sec. 22-1-27	160.0		70.40

Exhibit B—(Continued)

Al. No.	Name	Land Description	Acres	Rate	Ann. Fees
2739	Pearl Elizabeth Costa	NE $\frac{1}{4}$ Sec. 22-1-27	160.0		70.40
2740	Lewis Allen Costa	N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 22-1-27	160.0		70.40
Total Acres and Fees			3,165.02		\$1,392.61

On-and-Off Schedule

Unit No. 19
R. B. Fraser
Page No. 1

Al. No.	Name	Land Description	Acres
1808	Susie Bear That Walks	E $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 33; S $\frac{1}{2}$ Sec. 34; S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35-1-27; Lots 1, 2, 3, Sec. 2-2-27	638.49
2177	Mary Bigmountain	N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35-1-27	120.0
3430	Dorothy Oldtail	S $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ Sec. 14; All Sec. 23; E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 22-1-27	800.0
	Deeded	Lot 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 15-1-27	78.44
Total			1,636.93

Recapitulation of On-and-Off Lands:

Allotted land	1,558.49
Deeded land	78.44

United States
Department of the Interior
Bureau of Indian Affairs

Range Control Stipulations

1. Grazing Permits

Grazing permits on Indian reservations are issued subject to certain restrictions and regulations, and with the distinct understanding that the ranges will be reduced both in size and carrying capacity whenever the Commissioner of Indian Affairs shall consider such action essential to the protection of the interests of the Indians. Grazing permits cover Indian lands only, inclusive of unallotted land not otherwise disposed of and all unfenced allotments on which powers of attorney have been executed to the superintendent authorizing him to act for the allottees. Permits must be executed within thirty days after the receipt of notification of an award.

2. Payment of Grazing Fees

Grazing fees shall be paid annually or semiannually in advance, as specified in the permit. No charge will be made for animals under six months of age at the time of entering the reservation, **which** are the natural increase of the stock upon which fees are paid. Payment will be made for calves, colts, and lambs over six months old for the time grazed on the reservation after that age is reached at the same rate as for full grown stock.

3. Excess or Deficit of the Number of Stock Specified

Unless the number of livestock specified in the permit is reduced by the Commissioner of Indian Affairs, the permittee will not be allowed credit or rebate in case the full number is not grazed on the area. However, if the number authorized is exceeded without previous authority, the permittee will be required to pay in addition to the regular charge as provided in the permit, a penalty equal to 50 per cent thereof for such excess stock and the stock will be held until full settlement has been made.

4. Crossing Permits

Livestock shall not be driven upon or across any reservation without first securing a standard form crossing permit No. 5-929 properly signed by an authorized official of the Indian Service. This permit will state the number of head, dates of travel, class of stock, trail to be used, and destination. Such stock must be moved not less than 5 miles in case of sheep and 10 miles in case of cattle each day, and stock shall not remain more than 12 hours at any bed ground or camping place. In case of unnecessary delay, or wilful trespass, the superintendent or his authorized agent shall assess and collect such damages as may seem reasonable. Owners of stock will anticipate their time of entry and secure a permit well in advance of the date when the stock will enter upon the reservation. All stock will be refused entry upon the reservation until a permit to enter has been

issued. The agency office and the officer in charge must be notified at least 5 days in advance in order that arrangements may be made for an official to meet the stock. Stock owners who introduce their stock upon the reservation without proper authority will be considered as trespassers and their stock will be removed from the reservation and denied the right to return. The right is hereby reserved to issue crossing permits over all ranges, regardless of whether or not special driveways have been established thereover, and provided that the movement of stock so authorized shall be effected under the supervision of the superintendent or his agent. A permittee will not authorize another permittee to drive stock across his range.

5. Quarantine Regulations

All stock covered by permit is subject to the quarantine laws and regulations now in force or hereafter to be promulgated by the United States and the State in which the reservations are situated.

6. Law and Order

All regulations relative to the maintenance of law and order on Indian reservations and those forbidding the introduction of intoxicating liquors will be complied with by the permittee and his employees.

7. Entering the Range

The earliest date upon which stock will be permitted to enter the range will be the date shown in the permit. Notice must be given to the superintendent-

ent prior to entering the reservation. On reservations where permanent driveways have been established all livestock will be required to enter or leave the reservation on the particular driveway designated by the superintendent. On reservations where driveways have not been established and roads and trails are used for the movement of livestock, the route to be followed will be the most practicable one available and will be designated by the superintendent.

8. Counting of Livestock

All livestock grazing upon or crossing Indian reservations must be counted by an authorized officer of the Indian Service. Arrangements should be made for counting all livestock before it enters the reservation. Permittees are required to notify the superintendent a sufficient length of time in advance to permit him to have a representative present when stock are counted on or off the reservation. The right is reserved by the Indian Service to have a representative present at each roundup to check the number of stock, and in the event that the permittee shall fail or refuse to roundup his stock at proper times and in a satisfactory manner for the purpose of allowing a count of the stock, the superintendent shall have the right to roundup and count said stock at the expense of the permittee.

9. Branding of Stock

All livestock grazed under permit on Indian reservations or livestock which is authorized to cross

said reservations under formal crossing permit must be branded so as to be identified. The brands of all livestock grazed upon the reservation under permit must be recorded in the office of the superintendent with the owner's name.

10. Affidavit of Permittee

If grazing permits are issued for a period exceeding one year, the permittee will be required to execute (or have executed by a competent foreman) an affidavit showing the number of livestock grazed under authority of such permit and on hand at the close of June of each year, and, in case of occupancy of the area during the previous winter, the number carried over, if any; and another affidavit at the close of December of each year showing the livestock then on hand and the number carried during the summer of that year, or such period as may be required by the Commissioner of Indian Affairs. Affidavits should be made on standard form 5-370.

11. Camp Record

A camp record showing the number of each camp, approximate number of days of feed available, dates used, and losses from predatory animals, etc., will be required in connection with all sheep grazing permits. Reports should be made by the permittee at the close of each grazing season on standard form 5-518. A record should also be made of all predatory animals killed on the range unit by the permittee and his employees and a report made to the superin-

tendent. In States where bears are protected by law only such bears may be killed as are actually killing or attempting to kill livestock.

12. Camp Fires

Camp fires must not be built against logs, stumps, or trees. The ground around the fire must be cleared of all inflammable material to at least a distance of 6 feet on all sides. The fire itself must be built in a hole cut at least 10 inches into the mineral earth. The camp fire must be completely put out with water or mineral earth whenever the camp is left alone even for a short time. It is suggested that stoves be used in camp whenever possible, in order to decrease the fire hazard. Each camp outfit must include a shovel and an ax, each in good condition.

13. Smudge Fires

Smudge fires must not be made unless absolutely necessary. They must never be made in places which have not been fully cleared for a distance of 25 feet on all sides. A smudge fire must never be made near the roots of a tree, in or near a stump or snag, and must be close to and in plain sight of camp. Such fires, when not serving the purpose for which they are made and when the camp is deserted or moved, must be immediately and completely extinguished with water or by burying with mineral earth.

14. Conduct in Case of Fire

Whenever a permittee discovers an unauthorized and uncontrolled fire burning, whether started by

his own carelessness or in some other way, he should put it out if he can. If it cannot be put out or placed under temporary control, it should be reported to the nearest forest or grazing officer as soon as possible. In case of fire all range users are expected to place themselves and their employees at the service of the forest or grazing officer in charge for such work in connection with the fire as the officer may request. The failure of any permittee to co-operate to the fullest extent possible in the control of forest and range fires may result in the immediate cancellation of any permits which he may hold and his removal from the reservation. The unauthorized setting of a fire or carelessness in connection with an authorized fire may result in criminal prosecution under Section 6 of the act of June 25, 1910 (36 Stat. L., 855-857).

15. Trespass

All permittees must avoid trespassing. In case of trespass the herder and packer may be excluded from the reservation. The owner is liable to prosecution for civil damages. When upon the reservation the herder, packer, and camp mover must understand that should the instructions of their employer and the forest or grazing officer disagree as to the manner in which the range should be used, they must follow the instructions of the officer. Ordinarily the grazing movements of stock of a permittee within the range assigned him will not be interfered with, but the superintendent reserves the

right to direct such movement whenever he deems it necessary for the proper protection and utilization of the range. The following acts constitute trespass:

(a) The grazing upon or the driving of any stock across the reservation without a written permit, or the grazing upon or the driving across any reservation in violation of the terms of a permit.

(b) The grazing of stock upon Indian land within an area closed to grazing of that kind of stock.

(c) The grazing of stock by a permittee or lessee upon an area withdrawn from use for grazing purposes.

(d) Allowing stock to drift and graze upon the reservation without a written permit.

(e) Violation of any of the terms of the grazing permit or crossing permit.

(f) Refusal to move stock upon instructions of an authorized officer of the Indian Service when an injury is being done to the range or forest by reason of improper handling of the stock.

16. Damage to Roads, Trails, or Springs

Any person or persons to whom grazing permits or crossing permits have been issued receive such permits with the understanding that they are obligated to repair all damage to roads or trails caused

by the presence of their stock in any part of the reservation. Permittees must build any new roads, trails, or bridges found necessary for the proper handling of their stock. They must also fence any springs or seeps on Indian land which are being damaged by the trampling of their stock, if they shall be ordered to do so by the superintendent or his duly authorized representative.

17. Damage to Indian Property

The permittee will exercise due precaution to prevent injury to the premises or livestock of Indians and will be required to return to the vicinity of any Indian's home any livestock belonging to such Indian which may have strayed through the handling of stock under this permit or drifted away with the permittee's herd. The permittee will be required to reimburse the Indians for any damage that may be done to their premises or livestock through the acts of the permittee, his employees, or livestock.

18. Bedding Sheep

The bedding ground must be changed every day unless some natural condition will not allow the change to be made. Where possible the bedding out system will be used. Except where camp wagons are used no bed ground will be occupied for more than two night, and where camp wagons are being used three nights will be the maximum time allowed. Failure to observe these rules will result in that part of the range being withdrawn from the grazing area

and possible removal of the stock from the reservation. The trailing of sheep into and out from a permanent bed ground will not be allowed. Bed grounds where possible will be located at least one-quarter of a mile from a running stream, spring, or other water.

19. Disposition of Carcasses

The carcasses of all animals which die upon the reservation from contagious or infectious diseases must be burned at once, and the carcasses of all animals which die close to water, trails, or other places where they will be a nuisance must be removed immediately and buried or burned. The same extreme care should be taken when building or putting out a fire for burning a carcass as in case of a fire for any other purpose.

20. Salting of Stock

When the forest or grazing officers shall require it all stock grazed under permit must be salted regularly at such places and in such manner as may be designated. This rule applies more particularly to cattle but on some ranges may also apply to sheep. The use of troughs is advocated and these should be placed on rocky ground and well removed from water. Under no conditions will salt be placed at or near water. The proper use of salt on all ranges should aid in preventing stock from remaining too long at watering places and thereby permanently damaging the feed. Stock will alternate between salt

and water if the two are widely separated and will consume as much range around a salt ground as around a water hole.

21. Handling of Sheep

The open-herding system of handling sheep should be used on all ranges where applicable. The principal points in this system are:

(a) Herding in the lead of sheep instead of in the rear, and training them to spread out and graze quietly.

(b) Grazing rather than driving when going to and from water.

(c) Bedding down the sheep on fresh bed grounds where night overtakes them, with proper selection of bed grounds so the sheep will be contented.

(d) Camping close to the sheep each night by using a burro or horse to pack the herder's food and bed, or packing the herder's outfit with a saddle horse from a central camp.

(e) Using dogs as little as possible after the sheep are properly trained and keeping dogs principally to protect the flock from predatory animals.

(f) Ewes with lambs will **invariably graze** around the bed ground before leaving. For this reason ewes and lambs should never be camped twice in the same place, if avoidable.

22. Protection of Game, Fish, and Birds

It is expected that herders and other employees will comply with the game laws of the State in which the reservation is located and will assist the forest, grazing, and State officers in the enforcement thereof, and they will be required to comply with all regulations of the Indian Service regarding fish and game.

23. Range Improvements

It is the policy of the Service to encourage the construction of improvements necessary for the proper management of livestock and the utilization of the range. Proper range improvements will make available much feed which could not otherwise be utilized. However, the cost of such improvements will be borne by the permittee unless otherwise provided for in the permit.

24. Condition of Camping Ground

Camp grounds must be kept in a clean and sanitary condition. All rubbish, tin cans, etc., must be properly burned or buried during occupancy or upon removal to new sites.

25. General Conduct

These stipulations have been made for the assistance and guidance of permittees and become a part of their grazing permits. If faithfully carried out they will promote the best interests of all concerned. This fact should be recognized by livestock owners and a spirit of hearty co-operation maintained. The

Service desires permittees who will work with the forest and grazing officers. Those who comply with the stipulations will be given every reasonable consideration consistent with good business management, while those who disregard them will be denied the privilege of further grazing upon Indian reservations.

26. Applicability of Stipulations.

The above range control stipulations are hereby prescribed for use in all grazing permits except as special provision shall be made by the Commissioner of Indian Affairs.

27. Interpretation of Stipulations

The final interpretation of these stipulations shall rest with the Secretary of the Interior.

DEPARTMENT OF THE
INTERIOR,
Office of Indian Affairs,
Washington.

Approved: May 29, 1931.

C. J. RHOADS,
Commissioner.

DEPARTMENT OF THE
INTERIOR,
Office of the Secretary,
Washington.

Approved: June 4, 1931.

JOS. M. DIXON,
First Assistant Secretary.

EXHIBIT B

(Copy)

Range Unit No. 19.

Contract No. I-23-ind-8615.

Additional Stipulations
Grazing Permit

The permittee hereby agrees to perform reasonable maintenance of range improvements on the range unit in a manner acceptable to the Superintendent or his duly authorized representative.

It is understood and agreed that allowance will be made for the grazing of Indian owned livestock on the range unit covered by this permit. In the event it is necessary for Indian owned livestock to be grazed in the unit, proper adjustment will be made on the maximum number of livestock authorized and in the payment of fees.

It is understood and agreed that the area described in the land schedule attached to and made a part of the permit shall be increased by the addition of non-competent allotments within the range unit boundaries upon which authorities to grant grazing privileges are obtained at any time during the contract period, and by the addition of allotments of non-competent minor Indians who reach their majority during the period that this permit is in force and whose allotments are now under leases executed by their competent parents, provided such minor Indians then execute authorities

to grant grazing privileges on their allotments, in which event the number of livestock to be grazed and the amount of grazing fees shall be increased proportionately to the increased area of the unit.

Movable range improvements, including fences, placed upon the range unit described in the permit by the permittee may be removed from said unit not later than 30 days after the termination of the permit.

The permittee is strictly prohibited from moving or removing any existing range fence or constructing any new fence on the unit without the written approval of the Superintendent.

It is hereby understood and agreed by and between the parties hereto that the additional stipulations contained herein shall be and are attached to and made a part of the certain grazing permit contract above referred to.

/s/ R. B. FRASER,
R. B. FRASER,
Permittee.

Approved: Dec. 18, 1950.

/s/ L. C. LIPPERT,
L. C. LIPPERT,
Superintendent.

Concurred in Dec. 20, 1950.

/s/ THOMAS L. CARTER,
THOMAS L. CARTER,
Regional Forester.

EXHIBIT C

United States
Department of the Interior
Bureau of Indian Affairs

12/3/54

Modification No.

MODIFICATION OF GRAZING PERMIT

(Copy)

Range Unit No. 19.

Crow Agency

Contract No. I-23-ind-8615.

Crow Reservation

Permittee: R. B. Fraser.

Date of Permit: November 17, 1954

By authority of law and under the regulations (25 CFR 71), and as may hereafter be amended, the above-cited grazing permit, as previously modified by Modifications Nos. none, is hereby modified to include or exclude the lands on which fees are paid, or those under the on-and-off clause, described in detail on the attached schedule, which is made a part hereof; and to increase or decrease the number of livestock in accordance with the carrying capacity of the lands, and to change the terms of the permit as indicated below:

Area of Tribal Land.....from	None	to	None	acre
Area of Allotted Land (fees paid)..from	3,165.02	to	3,125.02	acre
Area of Allottee Use Land.....from	None	to	None	acre
Area of Govt.-owned Land.....from	None	to	None	acre
Total	3,165.02	to	3,125.02	acre
Area of Private Land.....from	78.44	to	78.44	acre
Area of Leased Land.....from	1,558.49	to	1,558.49	acre
Total On-and-Off.....from	1,636.93	to	1,636.93	acre
No. Stock Under Permit—Cattle.....from	83	to	82 yearlong head	
(exclusive of On-&-Off) (C. H. S.)				
No. Stock Under On-&-Off—Cattle..from	41	to	41 yearlong head	
(C. H. S.)				
Total Number Stock—Cattle.....from	124	to	123 yearlong head	
(C. H. S.)				
Annual Grazing Fees	\$1,392.61	to	\$1,375.01	
Cash Bond	\$ 196.31	to	\$ 187.51	

Withdrawal from the Land Schedule:

Al. 2179—Rides Among Them—SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36-1-27—40 Acres @ 44
\$17.60 Annual fees. Fee Patent issued to Albert Vermandel.

This modification becomes effective December 1, 1951, and does not change any of the terms, conditions, or stipulations of the permit, except as specifically set forth herein.

In witness whereof the said permittee has hereunto set his hand and seal this 23 day of Feb., 1952.

/s/ R. B. FRASER,
(Permittee.)

Witnesses:

/s/ CLARK McGARRY.

/s/ E. M. WILSON.

[Endorsed]: Filed December 24, 1955.

[Title of District Court and Cause.]

MOTION

Comes now the defendant, R. B. Fraser, in the above-entitled action, for himself alone, and not for the remaining defendants, by and through the undersigned, his attorney, and moves the court to dismiss (a) the Seventh Count, (b) the Eighth Count, and (c) the Ninth Count, in plaintiff's complaint, in that each of said counts in said complaint fails to state a claim against the said defendant upon which relief can be granted.

Dated this 12th day of January, 1956.

/s/ STERLING M. WOOD,
Attorney for Defendant.

Service of copy acknowledged.

[Endorsed]: Filed January 13, 1956.

[Title of District Court and Cause.]

MOTION FOR PRELIMINARY INJUNCTION

Comes Now the plaintiff by and through its undersigned attorneys of record and moves the Court for a preliminary injunction in the above-entitled cause enjoining the defendants, R. B. Frazer, R. B. Fraser, Inc., a corporation, and Charles Fraser, also known as Chas. Fraser, their agents, servants, employees and attorneys from driving, drifting, allowing to drift, herding, or conveying any livestock on or upon, or permitting the same to be driven, drifted, allowed to drift, herded or conveyed, or pastured, grazed, or fed on or upon any of the lands and premises within the exterior boundaries of the Crow Indian Reservation, or any part thereof, during the pendency of this action, save upon any lands and premises lawfully within the possession of said defendants.

The grounds upon which this motion is made and based are set forth in the Complaint filed herein, and the affidavits of Gordon I. Powers, Clark C. Stanton, Orié E. Dosedall, Joe A. Cormier, Clem R. Cormier, Wm. G. Cheney, and the joint affidavit of Joseph B. Mast, Urban Landon and Dale J. Buxton, copies of which are attached hereto and made a part hereof.

That unless said defendants are restrained pending the final determination of this proceeding or until further order of this Court, the alleged trespasses and threats of future trespasses will ir-

reparably injure the plaintiff and the lands over which it has jurisdiction. The plaintiff has no other adequate remedy at law.

Dated this 2nd day of May, 1956.

KREST CYR,

United States Attorney for the
District of Montana;

/s/ DALE F. GALLES,

Assistant United States Attorney for the District of
Montana, Attorneys for Plaintiff.

[Title of District Court and Cause.]

AFFIDAVIT

State of Montana,
County of Yellowstone—ss.

Gordon I. Powers, being first duly sworn, on oath says:

I am and have been for seven and one-half years continuously last past an employee of the United States Bureau of Indian Affairs with my post of duty at Crow Agency, Montana, and have been during that time charged with the responsibility and authority to supervise and inspect the use of Indian grazing land, including suspected trespasses and other violations of the laws and regulations covering grazing operations on restricted land of

the Crow Indian Reservation. At the times hereinafter stated I personally observed the following facts:

Unit 22 Trespass, January 31, 1952

In response to a complaint from Mr. Joe Cormier made on January 30, 1952, I made a range count on January 31, 1952, of livestock grazing in trespass on non-competent land in range unit No. 22 permitted to Clem R. and Joe A. Cormier.

I entered the range unit No. 22 at 8:15 a.m., and met Joe and Clem Cormier who were on horseback. Both of the Cormier brothers told me that they had no cattle in range unit No. 22 at this time. I proceeded along in my Jeep and the Cormier brothers remained on horseback.

I identified the location of non-competent allotments Nos. 2505 and 2003. I counted 27 cattle branded [1]* right ribs grazing in trespass on Al. 2505, Lion That Walks—SW $\frac{1}{4}$ Sec. 33-3-27, and 28 cattle branded [1] right ribs or [2] right ribs grazing in trespass on non-competent Al. 2003, Her Horse Is Pretty Hunts to Die—Lots 2, 3, Sec. 31-3-26.

The brand [1] right ribs is recorded in the name of R. B. Fraser. The Cormier brothers told me that the brand [2] belonged to Bill Linderman of Red Lodge, Montana. All cattle grazing in this area were branded with one or the other of these two brands.

I left the cattle undisturbed. As I was leaving the area in which I counted the cattle and while I was still on non-competent permitted land, I met a man who said his name was Roy McGarry and who was driving a truck which I had often seen in the Fraser livestock operations. He told me that he worked for Mr. R. B. Fraser and was in charge of the cattle I had just counted, including the cattle branded [2] R.R. I pointed out to him the general location of the land that was permitted to the Cormier Brothers. He told me that he had been herding these cattle to the southwest of this permitted area on Mr. Fraser's competent leased land and that the cattle had recently been wandering since the snow had melted off and he was letting them go where they wanted to go. He also said that he had advised Mr. Fraser of this. He said he was planning to see Mr. Fraser that night so I asked him to advise Mr. Fraser that I had counted 55 of his cattle in trespass and that I was going to write a letter to notify him of the situation.

I then left Mr. McGarry and returned to Crow Agency.

Trespass in Range Unit No. 22, February 4, 1952

I made a range count of livestock grazing in range Unit No. 22 on February 4, 1952. I located the non-competent land permitted to the Cormier Brothers in range unit No. 22 and counted 73 cows branded [1] RR or [2] RR grazing in trespass on non-competent Allt. 2505, Lion That Walks—SW $\frac{1}{4}$ Sec.

33-3-27. The brand [1] RR is recorded in the name of R. B. Fraser. I also counted 136 steers with tails bobbed, no brand identifiable, grazing on the above non-competent permitted land.

I met a man named Robert Wahls feeding cake to the cattle. He said he worked for the Cormier Brothers and that the steers belonged to the Cormier Brothers. He said that these steers had been turned onto range unit No. 22 on February 2, 1952. Mr. Roy McGarry arrived and unloaded a horse from his truck, which was the same Fraser truck mentioned above. He told me that these cows belonged to Bob Fraser and that he had moved them to Fraser's competent leased land after he had talked to me on January 31, 1952, but they had drifted back to where they were grazing on this date after the Cormier steers were put onto unit 22. Mr. McGarry told me that he intended to move the cows out again and he and an Indian cowboy were gathering the cows when I left range unit No. 22.

I stopped at the Cormier Ranch on Pryor Creek and talked to Clem Cormier. He told me that he had moved about 160 steers onto range unit No. 22 on February 2, 1952.

I then returned to Crow Agency.

Trespass in Range Unit No. 22, February 13, 1952

In response to a complaint from Joe A. Cormier, permittee on range unit No. 22, made on February 12, 1952, I made a range count on range unit No. 22

on February 13, 1952. On the morning of February 13, 1952, I met Clem R. Cormier and Almon Hall, State Livestock Inspector, at the Cormier Ranch on Pryor Creek. We drove into range unit No. 22 where we met Joe Cormier and Albert Newman, a Cormier cowboy, who were on horseback. At this moment Mr. Roy McGarry drove up and we asked him to ride with us taking a livestock count. I asked Mr. McGarry if all the cows in the area were branded [1] right ribs and he said that they were and that there were also three steers in the herd with the same brand. I asked him whose name the brand was recorded under and he said it was either R. B. Fraser or R. B. Fraser, Inc. Mr. Hall, the Livestock Inspector, said the brand belonged to R. B. Fraser. Since Mr. McGarry said the cows were branded [1] right ribs and belonged to Mr. Fraser and because Clem Cormier said that he had only steers in range unit No. 22 I told Clem Cormier, Mr. Hall and Mr. McGarry that I did not need to disturb the cattle and identify every brand but would count the cows knowing that they belonged to Mr. Fraser. I identified the non-competent land under permit to the Cormier Brothers and counted 82 cows and 2 steers grazing in trespass as follows:

- 49 cows on non-competent allotment No. 1841—
Shows Going Takes Gun—N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec.
33-3-26.
- 33 cows and 2 steers on non-competent allotment No. Al. 2610, Medicine Wolf—Lot 2,
Sec. 4-4-26.

The two steers were rebranded [2] right ribs. Clem Cormier told me that the brand [2] right ribs belonged to Bill Linderman, Red Lodge, Montana. We then left the cattle undisturbed, dropping Mr. McGarry off at his truck inside the boundary of Range unit No. 22 and returned to the Cormier Ranch on Pryor Creek. We had lunch at the Cormier Ranch and I then returned to Crow Agency.

The man named Roy McGarry and referred to above is the same person whom I have seen in and about the cattle operations in charge of Charles W. Fraser on the Pryor area of the Crow Reservation. At the time stated above he was driving a truck which I had often seen at and about the livestock or grazing headquarters in charge of Charles W. Fraser.

Overstocking Range Unit No. 19, November 4, 1954

On November 4, 1954, Mr. C. R. Pilgeram, Range Management Assistant, and I made a range count of livestock grazing in range unit No. 19 permitted to Mr. R. B. Fraser.

I counted a total of 196 cattle, 95 calves and 17 horses grazing within the exterior boundaries of range unit No. 19. These cattle were branded [1] RR, [3] LR, and [4] LS. The brand [1] RR is recorded in the name of R. B. Fraser. The brands [3] LR and [4] LS are recorded in the name of R. B. Fraser, Inc. The horses were too wild to approach close enough to identify brands.

Mr. Pilgeram and I then left range unit No. 19 and drove to Billings. I visited the Billings Area Office and reported this range count to Mr. Thomas L. Carter, Area Land Operations Officer. We determined that the present stocking of range unit No. 19 equaled 221 cow units exclusive of calves, at the conversion rate of 2 horses to 3 cows, which equals 25 cow units plus 196 cattle, making a total of 221 cow units. Range unit No. 19 was overstocked by 98 cow units, only 123 cow units being authorized under Mr. Fraser's grazing permit on Range Unit No. 19.

Mr. Pilgeram and I then returned to Crow Agency.

Trespass on Range Unit No. 19, January 5, 1955

On January 5, 1955, I made a range count within the boundaries of range unit No. 19 to determine whether Mr. R. B. Fraser had removed his livestock from non-competent land that had been permitted to Mr. R. B. Fraser prior to cancellation of his grazing permit on range unit No. 19, the effective date of cancellation being December 31, 1954.

I entered the range unit by Jeep about 10:00 a.m. I counted 20 horses grazing in trespass on non-competent land that I identified as being Allt. 1803, Shoots Pretty Things Oldtail—NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 27-1-27.

The horses were wild and I could not approach closely enough to distinguish any brands. I counted 42 cattle grazing in trespass on non-competent land

that I identified as Allot. 1879, Finds His Enemies Forehead—N $\frac{1}{2}$ Sec. 27-1-27.

As I was approaching the cattle from the west I observed a horseman about $\frac{1}{2}$ mile distant riding away from the cattle in an easterly direction. I did not attempt to overtake him. I watched him ride off the rims to the east towards Fraser's camp. He was riding a small sorrel horse with four white stockings and a white blaze on the face. I was using binoculars.

Most of the cattle were horned 2-year-old heifers and they looked to me like they could be registered stock. I could not detect any brands because of the long hair. There were no ear marks or ear tags visible.

I observed numerous recent bed grounds which indicated that the cattle had been bedding in this area for the past several days.

I drove on to a gate at the east unit boundary at the section corner of Sections 25, 26, 35 and 36, T 1 S., R. 26 E. As I opened the gate I saw a light-colored pickup truck approaching from the direction of Fraser's camp about $\frac{3}{4}$ mile distant. I waited at the gate to see if the man in the pickup wanted to talk to me. There were two men in the pickup, neither of them familiar to me, and they drove on by me, passing about 100 yards away, and disappeared over the ridge headed in the direction from which I had just come.

I left range unit No. 19 and proceeded across a stubble field towards Pryor Creek Road when I saw the same pickup truck returning along the trail headed back towards the Fraser camp.

I drove up the Pryor Creek Road past the Fraser camp located on the southeast side of the highway on non-competent Allot. 1881, Jessie Forehead—SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35-1-27. As I drove by the camp I recognized the rider talking to the two men in the light-colored pickup and one other man. The rider pointed towards me as I drove by. I also recognized the sorrel horse standing alone in a corral near the road.

The land on which this camp is located was part of the non-competent land included in the grazing permit held by Mr. Fraser prior to the cancellation of the permit effective December 31, 1954. Mr. Fraser had no lease or permit on this tract of land on January 5, 1955.

I proceeded on up the Pryor Creek Road and onto Sage Creek where I conducted a range inspection of that area and then returned to Crow Agency arriving at 5:45 p.m.

The following day, on January 6, 1955, Mr. Clark Stanton, Range Conservationist, and I visited the Fraser camp on Pryor Creek on Allot. 1881, Jessie Forehead, at about 5:45 p.m. We were invited into the kitchen of the living quarters and we introduced ourselves to two men and a woman who gave their names as Mr. and Mrs. Boardman and Mr. Rags-

dale. I told them I was from the Crow Agency Office and asked if they could tell me who owned the cattle in the pasture across the road, a part of range unit No. 19. Both men stated that the cattle were Fraser's, most of them Bob's but they thought Charlie Fraser owned some of them. I asked them if they worked for Bob Fraser and they both answered yes, that they had been working for him since some time in November, 1954. I asked them if the cattle were branded and they both said yes, that Bob's brand was [4] on the left shoulder but neither men knew what Charlie Fraser's brand was. I asked them if the heifers were registered and they said yes, most of them were. I asked them which of them was the man that I had seen riding away from the cattle yesterday and Mr. Boardman, who said his first name was Karl, answered that he was the rider and he had seen me just before he rode down off the rims. He said he had been looking through the cattle for a calf that was missing. Mr. Boardman said there should be 46 cattle and 22 horses in the pasture. I told him this pasture was known as range unit No. 19 and that Mr. Fraser's grazing permit on the range unit had been cancelled December 31, 1954, and that the cattle were in trespass.

I asked them if they had to drive the cattle up the draw where I had seen them grazing or if they just drifted up there. They both stated that the cattle had been coming down to water in the ditch and Pryor Creek near the camp and drifting back by

themselves for quite awhile. Mr. Boardman repeated that they did not have to drive the cattle, that they drifted back by themselves.

I asked them if the reservoir on Bob Fraser's land to the south of the rims and south of where the cattle were grazing was frozen over. They both said that it was frozen over but they had opened up a hole occasionally. I asked if these were the only cattle in the pasture and they both agreed that this was the only herd in the pasture at this time. I did not tell them to remove the cattle. I told them I would see Charlie Fraser or Bob Fraser about the matter. I thanked them for their co-operation and Mr. Stanton and I returned to Crow Agency, arriving at 7:10 p.m.

Trespass in Range Unit No. 19, July 8, 1955

In response to a complaint from both Clem R. and Joe A. Cormier, permittees of range unit No. 19, I made a range count of horses grazing in range unit No. 19 on July 8, 1955, arriving at the northwest boundary at 7:45.

I mounted a horse that had been left for me inside of the fence on the unit boundary and rode into the unit to locate the Cormier brothers who had entered the range unit ahead of me.

When I reached a high bench in the northwest corner of unit No. 19, I observed a herd of horses followed by several riders approaching from the southeast about $1\frac{1}{2}$ miles distant. I rode to meet

them and helped herd 3 mules and 18 horses to a fence corner on non-competent allotment No. 1803, Shoots Pretty Things Oldtail, Lot 5, Sec. 21, T. 1 S., R. 27 E., where Joe Cormier, Clem Cormier, Pat Cormier and a cowboy named George held the herd while I identified the brands. The following identification was made with the assistance of the above-named cowboys:

2 mules branded [3] right shoulder.

1 mule branded [5] left jaw.

1 sorrel gelding and 1 bay mare branded [6] left hip.

1 sorrel gelding branded [7] left hip ("boot brand").

1 chestnut, 1 sorrel piebald, 2 sorrels with stars on their faces, 1 brown, 1 light palomino and 1 golden palomino, all geldings and 1 brown mare branded [5] left jaw.

1 bay gelding branded CBC left thigh.

1 brown gelding branded 6-H left hip.

1 bay gelding with an unreadable brand on the left shoulder.

1 white gelding, 1 bay gelding, and 1 roan mare with no brands that I could see.

We dropped the herd at the place of counting at about 9:15 a.m. After we left the horses the Cormier brothers pointed out the location where they had first found the horses. I identified this location as non-competent allotment No. 1803, Shoots Pretty Things Old Tail—E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 21-1-27.

I easily recognized most of the horses in this herd as the same horses I had seen running with the

horse herd I counted in trespass on January 5, 1955.

I drove into Billings where I checked the following brands for ownership in the office of the Livestock Inspector at the Billings Public Stockyards on Montana Avenue:

[5] Left jaw, Fraser Livestock Co.

[3] RS, R. B. Fraser, Inc.

[6] LH, M. E. Taylor, Box 417, Billings, Montana.

[7] LH, J. Park Taylor, Melrose, Montana.

CBC LT, R. B. Fraser.

6-H LH, C. M. Jr., and Kathleen Shreeve, Willard, Montana.

The brand inspector on duty told me that Bob Fraser had bought the horses branded 6-H left hip and that J. Park Taylor, owner of the brand [7] ("boot") LH, was working at the present time for Bob Fraser.

I then returned to Crow Agency.

Trespass in Range Unit No. 19, July 28, 1955.

I made a range inspection of range unit No. 19, permitted to the Cormier Brothers, on July 28, 1955. I entered the unit boundary at a gate near the section corner of Sections 25, 26, 35 and 36, T. 1 S., R. 27 E., at 11:00 a.m.

I counted 8 cows and 3 calves branded [1] RR grazing in trespass on non-competent Allot. No. 1879, Finds His Enemies Forehead—N $\frac{1}{2}$ Sec. 27-T. 1 S., R. 27 E. I continued on through the range unit and counted 18 horses and 3 mules in trespass near

a small reservoir on non-competent Allot. No. 2739, Pearl Costa—NE $\frac{1}{4}$ Sec. 22-1-27. I readily identified these horses and mules as being the same ones that I had counted in trespass on July 8, 1955.

The cattle brand [1] RR is recorded in the name of R. B. Fraser. I then left the range unit and drove into Billings where I visited the Billings Area Office before returning to Crow Agency.

/s/ GORDON I. POWERS.

Subscribed and sworn to before me this 30th day of April, 1956.

[Seal] /s/ DALE F. GALLES,
Notary Public for the State of Montana, residing
at Billings, Montana.

My commission expires April 15, 1958.

[Title of District Court and Cause.]

AFFIDAVIT

Civil No. 1804

State of Montana,
County of Yellowstone—ss.

Clark C. Stanton, being first duly sworn, on oath says:

I am and have been for 11 years continuously last past an employee of the United States Bureau of Indian Affairs with my post of duty at Crow Agency, Montana, and have been during that time

charged with the responsibility and authority to supervise and inspect the use of Indian grazing land, including suspected trespasses and other violations of the laws and regulations covering grazing operations on restricted land of the Crow Indian Reservation. On the 24th day of May, 1954, I personally observed the following facts:

On Monday, May 24, 1954, I range counted Unit No. 19, I counted 182 cattle branded [4] on the left shoulder or [1] on the right shoulder. [4] brand and [1] brand are the registered brands of R. B. Fraser.

I also counted 32 horses in the unit but was unable to get close enough to the horses to read the brands.

Using the ratio of 3 cow units to 2 horses, the 32 horses equal 48 cow units. Adding the 48 cow units to the 182 cattle counted equals a total of 230 cow units in the Range Unit No. 19.

The grazing permit on Unit 19 authorizes the grazing of 123 cattle so the unit is overstocked by 107 cow units.

After completing my range count, I returned to Crow Agency having seen or spoken to no one.

/s/ CLARK C. STANTON.

Subscribed and sworn to before me this 30th day of April, 1956.

[Seal] /s/ DALE F. GALLES,
Notary Public for the State of Montana, residing
at Billings, Montana.

My commission expires April 15, 1958.

[Title of District Court and Cause.]

AFFIDAVIT

State of Montana,
County of Yellowstone—ss.

Orie E. Dodsall, being first duly sworn, deposes and says:

That I reside on Pryor Star Route out of Billings, Montana, and I am in the business of ranching and farming on lands within the exterior boundaries of the Crow Indian Reservation in Yellowstone County, Montana.

That on the morning of December 17, 1955, and in the presence of Clarence Leischner of Billings, Montana, I observed and inspected about 100 head of cattle branded [1] right rib or [8] left hip or [9] on left rib on restricted Indian non-competent land on which I have a valid lease, which land is more particularly described as the South Half (S $1\frac{1}{2}$) of Section 16 and the Southwest Quarter (SW $\frac{1}{4}$) of Section 15, Township 4 South, Range 26 East, M.P.M., on the Crow Indian Reservation in Yellowstone County, Montana.

That said cattle are owned by R. B. Fraser who operates a cattle ranch in the vicinity of my land, and that said herd of cattle were on the above-described land without the consent or permission of me or anyone authorized to grant the same.

That again on December 24, 1955, the same 100 head of cattle above-described were grazing upon and observed by me on the land above mentioned

without the consent or permission of me or anyone authorized to grant the same, at which time I drove them off the land under lease to me as above set forth.

That on January 21, 1956, the same 100 head of cattle above described were observed by me on the same land above described at which time I drove them off and on to the land operated by R. B. Fraser.

That continuously from February 23, 1956, to March 6, 1956, the above-described herd of cattle were observed daily upon the restricted land above described without the consent or permission of me or anyone authorized to grant the same.

/s/ ORIE E. DOSDALL.

Subscribed and sworn to before me this 2nd day of May, 1956.

[Seal] /s/ FLORA B. HATHEWAY,
Notary Public for the State of Montana, Residing
at Pryor, Montana.

My Commission expires 11/13/58.

[Title of District Court and Cause.]

AFFIDAVIT

State of Montana,
County of Yellowstone—ss.

Joe A. Cormier, being first duly sworn, deposes and says:

That I reside at Billings, Montana, and in conjunction with my brother, Clem Cormier, Billings, Montana, operate a cattle ranch on land located within the exterior boundaries of the Crow Indian Reservation, in Yellowstone County, Montana, which said cattle operation has been conducted by us for many years.

That on January 30, 1952, I observed and inspected about 300 head of cattle branded [1] right ribs or [2] right ribs grazing on the following described restricted Indian non-competent land which is under lease to my brother and me, more particularly described as follows:

W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 3 and N $\frac{1}{2}$ of Section 4, all in Township 4 South, Range 26 E., M.P.M.

N $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 31; SE $\frac{1}{4}$ of Section 32; S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ of Section 33; W $\frac{1}{2}$ and SE $\frac{1}{4}$ of Section 34, all in Township 3 South, Range 26 East, M.P.M.

That said cattle branded as above set forth were known to me to be owned by R. B. Fraser.

That on January 31, 1952, in the presence of my brother Clem Cormier and Gordon I. Powers, land operations officer for the Crow Indian Reservation, I observed and inspected 27 cattle branded [1] right ribs grazing in trespass on the SW $\frac{1}{4}$ of Section 33, Township 3 South, Range 27 East, and 28 cattle branded [2] right ribs or [1] right ribs grazing in trespass on Lots 2 and 3, Section 31, Township

3 South, Range 26 East all being restricted Indian non-competent land on the Crow Indian Reservation, Yellowstone County, Montana, on which my brother or I have a valid lease.

That on February 13, 1952, in the presence of my brother Clem Cormier and Gordon I. Powers, land operations officer for the Crow Indian Reservation, I observed and inspected 49 cows branded [1] right ribs in trespass on the N $\frac{1}{2}$ SE $\frac{1}{4}$, Section 33, Township 3 South, Range 26 East, being restricted Indian non-competent land under valid lease to my brother and me. On that same day and in the presence of the same persons I observed and inspected 33 cows branded [1] right ribs and 2 steers branded [2] right ribs in trespass on Lot 2, Section 4, Township 4 South, Range 26 East, being restricted Indian non-competent land upon which my brother and I hold a valid lease, both last mentioned parcels being on the Crow Indian Reservation in Yellowstone County, Montana.

/s/ JOE A. CORMIER.

Subscribed and sworn to before me this 2nd day of May, 1956.

[Seal] /s/ THOMAS D. KELLY,
Notary Public for the State of Montana, Residing
at Billings, Montana.

My Commission expires Sept. 16, 1956.

[Title of District Court and Cause.]

AFFIDAVIT

State of Montana,
County of Yellowstone—ss.

Clem R. Cormier, being first duly sworn, deposes and says:

That I reside at Billings, Montana, and in conjunction with my brother Joe A. Cormier operate and have been operating for some years a cattle ranch within the exterior boundaries of the Crow Indian Reservation.

That on or about June 12, 1945, I observed and inspected 821 sheep branded [10] red and black paint on back and side owned by R. B. Fraser grazing in trespass on restricted Indian non-competent land more particularly described as Sections 12 and 13, Township 4 South, Range 25 East, on the Crow Indian Reservation in Yellowstone County, Montana, which land was then under a valid lease to my brother and me. Said sheep were on the above-described land without the consent or permission of me or anyone authorized to grant the same.

/s/ CLEM R. CORMIER.

Subscribed and sworn to before me this 2nd day of May, 1956.

[Seal] /s/ DALE F. GALLES,
Notary Public for the State of Montana, Residing
at Billings, Montana.

My Commission expires April 15, 1958.

State of Montana,
County of Lewis and Clark—ss.

Affidavit

Wm. G. Cheney, being first duly sworn, deposes and says:

That he now is and has been for sometime the recorder of marks and brands for the Livestock Commission of the State of Montana residing at Helena, Montana, and that the following list of brands are registered to the persons or corporations named, together with the Certificate Number and date of such registration according to the official records of my office of which I am the custodian:

Brand	Place	Owner	Certificate No.	Date	Reference No.
[8]*	cattle—left hip horses—left jaw	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38645	12-31-51	31771-4
[11]	cattle left hip horses—left sho.	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38647	12-31-51	C-31975
CBC	cattle—left rib	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38646	12-31-51	24665-4
H4	cattle—left rib horses—left sho.	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38649	12-31-51	24782-4
[12]	cattle—left rib horses—left jaw	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38753	12-31-51	C-31971
[1]	cattle—right rib	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38642	12-31-51	13191-4

vs. United States of America

Brand	Place	Owner	Certificate No.	Date	Reference No.
[1]	cattle—left rib	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38643	12-31-51	13190-4
[13]	cattle—left rib horses—left thi.	R. B. Fraser 2015 1st Ave. No., Billings, Montana	D-38648	12-31-51	20056-4
[14]	cattle—left rib	R. B. Fraser	D-38640	12-31-51	C-31977
[14]	cattle—left hip	2015 1st Ave. No., Billings, Montana R. B. Fraser	D-38641	12-31-51	C-31979
[1]	cattle—left jaw	2015 1st Ave. No., Billings, Montana R. B. Fraser	7730-5	3-26-52	
[1]	horses—left jaw cattle—right jaw	2015 1st Ave. No., Billings, Montana R. B. Fraser	7731-5	3-26-52	
[15]	horses—right jaw cattle—right sho.	2015 1st Ave. No., Billings, Montana Robert B. Fraser	13717-5	10-22-53	R-3 & 55
[16]	cattle—right rib	2015 1st Ave. No., Billings, Montana Robert B. Fraser	13718-5	10-22-53	1860-4
[5]	horses—right thigh horses—left jaw	2015 1st Ave. No., Billings, Montana Fraser Livestock Co.	D-38644	12-31-51	R-3 & 55 C-31972
[5]	cattle—left jaw	2015 1st Ave. No., Billings, Montana Fraser Livestock Co.	7729-5	3-26-52	
[3]	cattle—left ribs horses—right sho.	2015 1st Ave. No., Billings, Montana R. B. Fraser, Inc.	7588-5	3-13-52	Trans C-31973
[17]	horses—right thi.	2015 1st Ave. No., Billings, Montana R. B. Fraser, Inc.	7586-5	3-13-52	Trans C-31974

[4]	cattle—left sho.	R. B. Fraser, Inc. 2015 1st Ave. No., Billings, Montana	7587-5	3-13-52	Trans C-31976
[9]	cattle—left ribs horses—left sho.	Chas. Fraser Pryor Star Rt., Billings, Mont.	D-16159	5- 1-51	30146-4
F - F	cattle—right ribs horses—left sho.	Dan Fraser Box 142, Grass Range, Mont.	D-21194	6- 2-51	10733-4
[18]	cattle—right ribs horses—left thigh	Dan G. Fraser Winnett, Mont.	16357-5	10- 6-54	B-201 C-1297
[19]	cattle—right ribs horses—right sho.	Margaret Fraser Grass Range, Mont.	D-21195	6- 2-51	55 17755-4

/s/ WM. G. CHENEY.

Subscribed and sworn to before me this 30th day of April, 1956.

[SEAL]

/s/ S. C. KENNETH,

Notary Public for the State of Montana,
Residing at Helena, Montana.

My Commission expires 10/8/57.

AFFIDAVIT

State of Montana,
County of Big Horn—ss.

We, Joseph B. Mast, Forester, Urban Landon, Range Guard, and Dale J. Buxton, Range Examiner, all Forest Officers of the Indian Forest and Grazing Division, of the U.S. Indian Service, being first duly sworn according to law depose and say:

That on December 31, 1943, at about 3:00 p.m. we saw and identified one horse branded [20] on the left shoulder, one horse branded [3] on the right shoulder and one horse [21] on the left jaw, ranging and grazing without an approved grazing permit within the boundaries of Unit 20A more specifically described as Section 5 and 6. Township 4 South, Range 26 East.

Further that on the same day at about 3:15 p.m. we saw and identified four horses branded [3] on the right shoulder, one horse branded [3] on the right hip, one horse branded [21] on the left jaw, 3 horses branded [22] on the right shoulder, six additional horses branded [3] on the right shoulder and one horse branded [21] on the left jaw, grazing in a state of trespass within the boundaries of Unit 20A on an area more specifically described as Allot. 2432, SE $\frac{1}{4}$ Sec. 32, Township 3 South, Range 26 East, the description of which was identified by finding land marks established by the original survey.

Further that on the same day at about 4:30 p.m. we saw and identified 1085 head of sheep ranging and grazing in trespass on Range Unit No. 23 on Allotment 2118 otherwise described as the SE $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 36, Township 3 South, Range 26 East, the description of which was positively identified by finding the corner stone representing the Southeast corner of Section 25, Township 3 South, Range 26 East. That these sheep were branded [10] and identified as R. B. Frazer's.

Further that on the same day we saw and identified 1200 sheep ranging and grazing on non-competent Indian Allotment 3590, the same being definitely located by finding the southwest corner of Section 12, T. 4 S. R. 25 E. That these same sheep were branded [8] and [14] and [10], the same being identified as those of R. B. Fraser of Billings, Montana. Further that we found tracks and marks supporting the fact that fact that these same sheep have been grazing and ranging on the open range lying within the boundaries of Range Unit 20A, and that Mr. Fraser has his sheep camp and night bed ground located in the Southeast quarter of Section 15, Township 4 South, Range 25 East.

Further that this allotment 3590 was reserved from Range Unit 20A for Indian use, that no office contract has been given on this allotment and that therefore Mr. Fraser is in a state of trespass on this area.

In witness whereof, we hereunto set our hands and seals this 3rd day of January, 1944.

/s/ JOSEPH B. MAST,
Forester;

/s/ URBAN LANDON,
Range Guard;

/s/ DALE J. BUXTON,
Range Examiner.

Subscribed and sworn to before me, a notary public, in and for the State of Montana, County of Big Horn, this 3rd day of January, 1944.

[Seal] /s/ ANNA G. SLOAN,
Notary Public.

My commission expires 6-11-44.

[Endorsed]: Filed May 3, 1956.

[Title of District Court and Cause.]

ORDER

The motions of the defendants both filed here on January 13th, 1956, are before the court for decision on a brief filed by plaintiff, none having been filed by any of the defendants.

The motions call for a more definite statement of the nature of the claim, and for the dismissal of Counts VII, VIII and IX of the complaint for failure to state a claim against R. B. Fraser.

The Court has considered the motions, complaint and brief of plaintiff, and being duly advised and good cause appearing therefor, will sustain the request to strike from the complaint the words: "or some of them" set forth in one of the motions from paragraph VI of the first count, and paragraphs I of the second, third, fourth and fifth counts, and paragraphs I and II of the sixth count of the said complaint. Otherwise the said motions are hereby overruled, with 20 days to answer upon receipt of notice hereof.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed May 26, 1956.

[Title of District Court and Cause.]

ORDER GRANTING PRELIMINARY
INJUNCTION

The motion of plaintiff for a preliminary injunction was again brought to the attention of the Court by counsel for the plaintiff on November 27, 1956, and renewed by the filing of the affidavit of Albert Vermandel and the joint affidavit of Clem R. Cormier, Joe A. Cormier, and Albert Vermandel, all showing that cattle bearing the brand A on the left hip of R. B. Fraser, of Billings, Montana, were, on November 18, 1956, to the number of 96 head,

and on November 20, 1956, to the number of 85 head, ranging and grazing on the non-competent allotted lands described in said affidavits, and that such lands are now included in grazing permit contract No. 14-20-252-440, dated August 22, 1955, covering range unit No. 19, on the Crow Indian Reservation, State of Montana, which grazing permit is issued to J. A. and Clem R. Cormier, for the period of December 1, 1955, to November 30, 1960.

The Court has also considered other affidavits filed herein showing trespass by cattle of said R. B. Fraser in the manner and to the effect above described, and having also considered the briefs filed herein by counsel for the respective parties, from all of which sources above referred to it appears that cattle owned or under control of the defendants above named have been found in trespass from time to time upon the lands and in the manner set forth in said affidavits and the complaint on file herein, and by reason thereof the motion for preliminary injunction is hereby granted, and the defendants named in the above-entitled cause, their agents, servants, employees and attorneys are hereby enjoined from driving and drifting, allowing to drift, herding or conveying any livestock on or upon, or permitting the same to be driven, drifted, allowed to drift, herded or conveyed, or pastured, grazed, or fed on or upon any of the lands and premises within the exterior boundaries of the Crow Indian Reservation in the State of Montana, or any part thereof, during the pendency of this action,

save upon any lands and premises lawfully within the possession of said defendants.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered November 30, 1956.

[Title of District Court and Cause.]

AMENDED ANSWER

First Defense

The Plaintiff's complaint fails to state a claim against the defendants upon which relief can be granted.

Second Defense

1. Defendants deny each and every allegation contained in plaintiff's first count.

2. Defendants deny each and every allegation contained in plaintiff's second count.

3. Defendants deny each and every allegation contained in plaintiff's third count.

4. Defendants deny each and every allegation contained in plaintiff's fourth count.

5. Defendants deny each and every allegation contained in plaintiff's fifth count.

6. Defendants deny each and every allegation contained in plaintiff's sixth count.

7. Defendants admit that the defendant, R. B. Fraser, had posted a bond in the sum of \$687.51 with the Bureau of Indian Affairs, but deny each and every other allegation contained in plaintiff's seventh count, which is not heretofore specifically admitted.

8. Defendants deny each and every allegation contained in plaintiff's eighth count.

9. Defendants deny each and every allegation contained in plaintiff's ninth count.

Third Defense

1. Defendants allege that said First Cause of Action is barred by Statute of Limitations, Title 28, U.S.C.A., Section 2462.

Wherefore, defendants pray that this action be dismissed and that it will hence go without delay, and have and recover from the plaintiff their costs herein.

KURTH, CONNER & JONES,

By /s/ C. W. JONES,

Attorneys for the Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 2, 1957.

[Title of District Court and Cause.]

PRETRIAL ORDER

A pretrial conference was held at the Court Room in the United States Post Office Building at Billings, Montana, on May 29, 1957, at 10:00 a.m. Dale F. Galles, Esquire, and Harlow Pease, Esquire, represented the plaintiff. C. W. Jones, Esquire, represented the defendants.

This is an action for penalties prescribed by statute for trespass of livestock grazing on restricted Indian lands and for injunction.

Stipulations and Admissions

1. Defendants admit the allegations of paragraphs I, II and IV of the First Count of plaintiff's Complaint, which allegations are reiterated and restated in Counts Two to Six, inclusive.

2. Defendants admit the allegations of Paragraph V, except that the words "in accordance with and supplementary to 25 U.S. Code 179" shall be stricken therefrom, which allegations are reiterated and restated in Counts Two to Six, inclusive.

3. Defendants admit the allegations of paragraph III and stipulate with plaintiff that Fraser Livestock Company is a partnership consisting of R. B. Fraser and R. B. Fraser, Jr., and that this action is dismissed as against Charles Fraser also known as Chas. Fraser, who is now deceased.

4. The allegations of paragraph I of the Seventh Count of plaintiff's Complaint are amended to insert after the word "Indians" in line 4, the following: Except lands for which Indian title has been extinguished." Defendants admit the allegations of said paragraph I as so amended, which allegations are reiterated and restated in the Eighth and Ninth Counts of the Complaint.

5. Defendants admit the allegations of paragraph II of the Seventh Count, which allegations are reiterated and restated in the Eighth and Ninth Counts.

6. Defendants admit the allegations of paragraph III of the Seventh Count which allegations are reiterated and restated in the Eighth and Ninth Counts, except for lands described as deeded in Exhibits B and C attached to the Complaint.

7. In the event plaintiff offers proof with respect to trespass on December 15, 1955, alleged in paragraph II of the Sixth Count of plaintiff's Complaint, it is stipulated and agreed that the testimony of Rupert Chamberlain, commencing on page 55 and ending on page 86 of the Transcript of Cause No. 30253 in the District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone, entitled "Orrie E. Dossdall vs. R. B. Fraser and Charlie Fraser" may be submitted in evidence.

8. Defendants admit that Defendant R. B.

Fraser owned and used the F Circle brand on his sheep in 1943 and 1945.

9. Defendants admit that the record of the brands as set forth in plaintiff's Exhibit No. 1 at the hearing on preliminary injunction is a true record in the office of the Recorder of Marks and Brands for the Livestock Commission of the State of Montana at Helena, Montana.

10. Plaintiff and defendants stipulate that the Amended Answer may be filed as a pleading in this action, subject however to the foregoing stipulations and admissions contained in this Order.

/s/ W. J. JAMISON,
United States District Judge.

Approved:

/s/ DALE F. GALLES,
Counsel for Plaintiff.

Approved:

/s/ C. W. JONES,
Counsel for Defendants.

[Endorsed]: Filed July 2, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial before the Court without a jury on July 2,

1957, and the Court having duly considered the pleadings, stipulations and admissions contained in the pretrial order, as well as the evidence, and being fully advised in the premises now finds the following:

Findings of Fact

I.

Plaintiff brings this action in its sovereign capacity for the use and benefit of the Indians of the Crow Indian Reservation and the Crow Indian Tribe, wherefore this Court has jurisdiction of the action.

II.

The Crow Indian Reservation is and at all times herein stated was a duly established Indian reservation under the laws of the United States, located within the State and District of Montana and within the Billings Division of said District, a plat of which is attached to the Complaint on file herein; that except for certain isolated tracts of land for which patents have been issued by plaintiff herein, the title to said lands in said reservation is and at all times herein stated was in the plaintiff in trust for the Crow Indian Tribe or certain members thereof; that said land at all times herein stated was and now is managed and supervised by the plaintiff through its agency created for that purpose, to wit, the Bureau of Indian Affairs.

III.

The Defendant R. B. Fraser is and at all times mentioned herein was a citizen and resident of the

State and District of Montana and within the Billings Division of the said District, and is and was the owner of lands and livestock and the lessee or grazing permittee of other lands, all of which are within the exterior boundaries of the Crow Indian Reservation. That Defendant R. B. Fraser, Jr., is and was the owner of certain land within the exterior boundaries of the Crow Indian Reservation and is the son of Defendant R. B. Fraser, and a stockholder in Defendant R. B. Fraser, Inc., a corporation, being associated with Defendant R. B. Fraser in the livestock business. That this action was dismissed as against Charles Fraser, also known as Chas. Fraser, who is now deceased. That Defendant R. B. Fraser, Inc., is a corporation organized and existing under the laws of the State of Montana in which Defendants R. B. Fraser and R. B. Fraser, Jr., are stockholders. That Defendant Fraser Livestock Co. is a partnership consisting of R. B. Fraser and R. B. Fraser, Jr.

IV.

Except for said patented lands, all other lands in the Crow Indian Reservation are and at all times herein stated were Indian trust lands, owned beneficially either by the Crow Tribe or by allottees who are members of said tribe, or heirs of such members, and the right to the exclusive occupation and enjoyment thereof was and is in the said Indians subject only to duly approved leases and grazing permits.

V.

On or about February 13, 1952, cattle owned by Defendant R. B. Fraser and managed and herded by him or his agents and servants, to wit, 82 cows, were found in trespass upon Indian trust land within the Crow Indian Reservation and on which said defendant did not have a lease, permit, license or privilege; that said animals were allowed to drift and graze upon plaintiff's said lands wrongfully, wilfully and without the consent of the plaintiff or the Indian owners thereof.

VI.

The plaintiff failed to prove the allegation of paragraph I of the Third Count of the Complaint as to the identity and ownership of the cattle therein described.

VII.

On or about July 8, 1955, horses and mules owned by defendants R. B. Fraser, Fraser Livestock Co., and R. B. Fraser, Inc., and managed and herded by them or their agents and servants, to wit, 9 horses and 3 mules, were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which said defendants did not have a lease, permit, license or privilege; that said animals were allowed to drift and graze upon plaintiff's said lands wrongfully, wilfully and without the consent of the plaintiff or the Indian owners thereof.

VIII.

On or about July 28, 1955, cattle owned by defendant R. B. Fraser and managed and herded by

him or his agents and servants, to wit, 8 cows and 3 calves, were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which said defendant did not have a lease, permit, license or privilege; that said animals were allowed to drift and graze upon plaintiff's lands wrongfully, wilfully and without the consent of the plaintiff or the Indian owners thereof.

IX.

From time to time over the period from 1945 to the filing of this action, defendants have allowed cattle and horses to drift and graze upon the lands of the Crow Indian Reservation upon which they held no valid lease or grazing permit, causing said livestock to graze and pasture on said lands. The drifting and grazing of said livestock was done or permitted by the defendants knowingly, wilfully, and without the consent either of the Indians affected thereby or the Superintendent of said Reservation, and in defiance of the plaintiff, and its officers and employees, having the supervision and management of said lands.

X.

In addition to the trespasses set forth above, defendants or their agents and servants caused or permitted to drift or graze upon Indian trust land within the Crow Indian Reservation and upon which defendants had no permit, lease or privilege whatever, certain livestock as follows:

June 12, 1945.....	821 sheep
January 28, 1952.....	300 cattle
January 30, 1952.....	55 cattle
February 4, 1952.....	73 cattle
December 15, 1955.....	90 cattle

XI.

Defendants have been requested repeatedly by plaintiff to remove their trespassing livestock from said lands, but defendants have permitted such trespasses to continue and without payment therefor. Trespasses have occurred which did not afford an opportunity to count the animals involved. A multiplicity of actions would be required to recover for each transaction. The plaintiff has no plain, speedy, or adequate remedy at law.

XII.

Subsequent to the filing and service of Complaint, defendants or their agents caused or permitted livestock to drift or graze upon Indian trust land within the Crow Indian Reservation and upon which defendants had no permit, lease, or privilege on March 21, 1956, March 29, 1956, April 9, 1956, November 20, 1956, December 12, 1956, January 17, 1957 and March 27, 1957.

XIII.

There was no evidence of any actual damage to the lands upon which defendants' livestock trespassed. There was evidence and the court finds that overgrazing causes permanent damage to the inheritance of the land, but the damages caused by

overgrazing are difficult to determine and are not capable of exact computation. Continued trespassing by defendants threatens overgrazing and consequent irreparable damage and injury to the inheritance of the lands.

XIV.

The defendant R. B. Fraser is the permittee named in grazing permit dated November 17, 1950, a copy of which is attached to the Complaint herein, marked "Exhibit B." This permit was modified by instrument dated February 23, 1952, a copy of which is attached to the Complaint and marked "Exhibit C." The lands described in Exhibit B, as modified by Exhibit C, are and at all times herein stated were Indian Trust lands, owned beneficially either by the Crow Tribe or by allottees who are members of said tribe, or heirs of such members, and the right to the exclusive occupation and enjoyment thereof was in said Indians, subject only to duly approved grazing permits or leases.

XV.

By the terms of Exhibit B attached to the Complaint on file herein the defendant R. B. Fraser was granted grazing privileges for 83 head of cattle for each grazing season and by the terms of Exhibit C attached to the Complaint on file herein said permit was modified by reducing the number of cattle from 83 to 82 per grazing season during the life of said permit. It is further provided by "Range Control Stipulations" attached to said Exhibit B that if the number of livestock authorized by the permit is exceeded, without previous authority, the permittee

will be required to pay in addition to the regular charges, the penalty equal to 50% thereof for such excess stock.

XVI.

On or about May 24, 1954, defendant R. B. Fraser caused to drift and graze upon Range Unit No. 19, described in said Exhibit B attached to the Complaint, 182 head of cattle and 3 head of horses. On or about November 4, 1954, defendant R. B. Fraser caused to drift and graze upon Range Unit No. 19, described in said Exhibit B, 196 head of cattle and 3 head of horses, which under the terms of said permit constituted $77\frac{1}{2}$ cow units in excess of the number authorized and permitted.

XVII.

Said grazing permit was cancelled on December 31, 1954, by the Bureau of Indian Affairs. The grazing fees required under said permit for the month of December, 1954, in the sum of \$114.64 were not paid. Plaintiff demanded payment thereof from the defendant R. B. Fraser, and he has failed and refused to pay said sum or any part thereof.

XVIII.

A bond posted by defendant R. B. Fraser in connection with the grazing permit hereinabove described was forfeited upon the cancellation of said permit, and the defendant R. B. Fraser is entitled to a credit in the sum of \$687.51 by reason of the forfeiture of said bond.

Conclusions of Law

I.

This court has jurisdiction.

II.

At all times mentioned herein there existed a duly promulgated and existing regulation of the Department of the Interior of the United States (25 C.F.R., 71.21), which provided, in accordance with and supplementary to 25 U.S. Code 179, as follows:

“No. 71.21. Trespass. The owner of any livestock grazing in trespass on restricted Indian lands is liable to a penalty of \$1. per head for each animal thereof together with the reasonable value of the forage consumed and damages to property injured or destroyed.”

The following acts are prohibited:

“(a) The grazing upon or driving across any restricted Indian lands of any livestock without an approved grazing or crossing permit, except such Indian livestock as may be exempt from permit.”

“(b) Allowing livestock not exempt from permit to drift and graze on restricted Indian lands without an approved permit.”

III.

The recovery sought by plaintiff under its First Count is a penalty under Title 25 U.S.C. Sec. 179, and this cause of action is barred by the provisions of Title 28 U.S.C. Sec. 2462.

IV.

Under the Second Count of Plaintiff's Complaint, the defendant R. B. Fraser is liable to the plaintiff under 25 U.S.C.A. Sec. 179 and 25 C.F.R. Sec. 71.21 for the sum of \$82.00, with interest thereon from February 13, 1952, at the rate of 6% per annum until judgment is entered thereon.

V.

Plaintiff is not entitled to any recovery from the defendants under the Third Count of plaintiff's Complaint.

VI.

Under the Fourth Count of Plaintiff's Complaint, the defendant R. B. Fraser is liable to the plaintiff under 25 U.S.C.A. Sec. 179 and 25 C.F.R. Sec. 71.21 for the sum of \$12.00, with interest thereon from July 8, 1955, at the rate of 6% per annum until judgment is entered thereon.

VII.

Under the Fifth Count of Plaintiff's Complaint, the defendant R. B. Fraser is liable to the plaintiff under 25 U.S.C.A. Sec. 179 and 25 C.F.R. Sec. 71.21 for the sum of \$11.00, with interest thereon from July 28, 1955, at the rate of 6% per annum until judgment is entered thereon.

VIII.

Plaintiff is entitled to a permanent injunction against the defendants, and each of them, enjoining them or their agents and servants from allowing to

drift and graze any livestock whatever on or upon, or permitting or allowing the same to be conveyed or pastured or grazed or fed on any of the lands and premises within the exterior boundaries of the Crow Indian Reservation, title to which is in plaintiff in trust for the Crow Indian Tribe or any member thereof, or otherwise interfering with the possession, use and enjoyment of said lands and premises by the plaintiff and its Indian wards, except upon any lands and premises lawfully within the possession of said defendants.

IX.

Under the Seventh and Eighth Counts of Plaintiff's Complaint defendant R. B. Fraser is liable to plaintiff under the terms of the grazing permit attached to the Complaint as Exhibit B, as modified by Exhibit C, for 77½ cow units in excess of the number authorized and permitted, in the sum of \$1,950.44, as liquidated damages, less the sum of \$687.51 as a set-off, or a net total of \$1,262.93, with interest at 6% per annum from May 24, 1954.

X.

Under the Ninth Count of Plaintiff's Complaint, the defendant R. B. Fraser is liable to plaintiff for grazing fees under the grazing permit attached to Complaint as Exhibit B for the month of December, 1954, in the sum of \$114.64, with interest at 6% per annum from September 1, 1954.

Let judgment be entered accordingly.

Dated this 1st day of November, 1957.

/s/ W. J. JAMESON,
United States District Judge.

[Endorsed]: Filed November 1, 1957.

[Title of District Court and Cause.]

OPINION

This action contains nine counts. In the first five counts plaintiff seeks recovery of a statutory penalty for livestock trespassing upon Indian lands, and in the sixth count a permanent injunction prohibiting the grazing of livestock by defendants upon these lands. In the seventh and eighth counts plaintiff seeks recovery for overstocking lands included in a grazing permit issued by plaintiff to defendant R. B. Fraser, and in the ninth count a balance due under this permit for the year 1954.

First Count

In its first count, plaintiff seeks recovery of a penalty of \$1.00 per head, or a total of \$2,285.00, for the trespass of 2,285 sheep, upon Indian Trust land of the Crow Indian Reservation on December 31, 1943. This cause of action is asserted under Title 25 U.S.C. Sec. 179, which provides:

“No. 179. Driving stock to feed on lands. Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range

and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of \$1 for each animal of such stock. This section shall not apply to Creek lands. (R.S. No. 2117; Mar. 1, 1901, c. 676, *31 Stat. 871).”

Supplementing the statute, the Department of the Interior adopted the following regulation:

“No. 71.21 Trespass. The owner of any livestock grazing in trespass on restricted Indian lands is liable to a penalty of \$1 per head for each animal thereof together with the reasonable value of the forage consumed and damages to property injured or destroyed.”

“The following acts are prohibited:

(a) The grazing upon or driving across any restricted Indian lands of any livestock without an approved grazing or crossing permit, except such Indian livestock as may be exempt from permit.

(b) Allowing livestock not exempt from permit to drift and graze on restricted Indian lands without an approved permit.” 25 C.F.R. 1956 Supp. 71.21.

Defendants contend that the action is barred by Title 28 U.S.C. Sec. 2462, which reads:

“No. 2462. Time for commencing proceedings. Except as otherwise provided by Act of Congress, an action, suit or proceeding for the

enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.”

Plaintiff argues that this proceeding is not an action for a penalty but one for the recovery of civil damages of a compensatory nature, and that the so-called penalty is in fact liquidated damages. In support of this contention, counsel rely primarily upon *Rex Trailer Co. vs. United States*, 350, U.S. 148, 100 L. Ed. 149, 76 S. Ct. 219; *Meeker vs. Lehigh Valley Railroad Co.*, 236 U.S. 412, 59 L. Ed. 644, 35 S. Ct. 328; and *United States vs. Weaver*, 5 Cir. 1953, 207 F.2d. 796. In my opinion all of these cases are distinguishable. They involved contractual relations in which the Government was a party. *Rex Trailer Co. vs. United States*, for example, involved the purchase of goods from War Assets Administration. In concluding that the recovery was civil in nature, the court recognized that, “The Government has the right to make contracts and hold and dispose of property and * * * may resort to the same remedies as a private person.” It held that liquidated damages are “a well known remedy” and when reasonable are not to be regarded as penalties. The instant case, however, does not involve any lease or other contractual relation, insofar as the first

count is concerned, but rather a trespass, without right, upon Indian land held in trust by the Government. The doctrine of liquidated damages accordingly is not applicable.

It may reasonably be inferred also from the regulations that the Department of Interior has construed the recovery of \$1 per head as a penalty rather than compensatory damages, in view of the additional provision for recovery of "a reasonable value of the forage consumed and damages to property injured or destroyed." 25 C.F.R. 1956 Supp. 71.21, *supra*.

Counsel have not cited, nor have I found, any cases which have passed upon the question of whether Title 28 U.S.C. Sec. 2462 is applicable to a cause of action asserted under Title 28 U.S.C. Sec. 179. In a long line of cases, however, the courts have consistently treated recovery under Section 179 as a penalty. See for example *United States vs. Ash Sheep Co.*, 9 Cir. 1918, 250 F. 592, affirmed 1920, 252 U.S. 159, 64 L. Ed. 507, 40 S. Ct. 241, where R.S. 2117 (U.S.C. Sec. 179) was construed as a "penal statute"; *Janus vs. United States*, 9 Cir. 1930, 38 F. 2d. 431, 438 where the court held that the penalty for trespassing under Section 179 may be recovered by either civil or criminal action; *Connolly vs. United States*, 9 Cir. 1945, 149 F.2d 666; *United States vs. Loving*, D.C.N.D. Tex. 1888, 34 F. 715.

It is my conclusion that the recovery sought under the first count is a penalty, and that the cause

of action asserted under this count is barred by the provisions of Title 28 U.S.C. Sec. 2462, *supra*.

Second, Third, Fourth and Fifth Counts

In the second, third, fourth and fifth counts, plaintiff seeks to recover the penalty prescribed by Title 25 U.S.C. Sec. 179, *supra*, for livestock trespassing on Indian lands in violation of the statute and regulations of the Secretary of the Interior, issued pursuant to authority conferred by Title 5 U.S.C. Sec. 22, and Title 25 U.S.C. Sec. 466, and found in 25 C.F.R., 1956 Supp., Sec. 71.21, *supra* (First Count).

Plaintiff concedes a failure of proof with respect to the third count. Under the second count plaintiff proved a trespass of 82 head of cattle on February 13, 1952; under the fourth count, a trespass of 9 horses and 3 mules on July 8, 1955; and under the fifth count, a trespass of 11 head of cattle on July 28, 1955.

Defendants contend that the statute requires a wilful or intentional trespass; that to the extent the regulations attempt to make the proof of trespass less onerous, they are unconstitutional; and that the evidence does not justify a finding of wilful or intentional trespass. Plaintiff contends that the proof is sufficient to show that defendants allowed their cattle to drift and graze upon the Indian lands in violation of the statute and regulations, and that the continuing nature of the trespasses justifies a finding of wilful trespass.

It is well settled (1) that the United States can prohibit absolutely or fix terms on which its property may be used; (2) that Congress has the exclusive right to control and dispose of the public lands of the United States; and (3) that when that right has been exercised with reference to lands within the borders of a state, neither the state nor any of its agencies has any power to interfere. *United States vs. Grimaud*, 220 U.S. 506, 55 L. Ed. 563, 31 S. Ct. 480; *Light vs. United States*, 220 U. S. 523 55 L. Ed. 570, 31 S. Ct. 485; *Utah Power & Light Co. vs. United States*, 243 U.S. 389, 404, 37 S. Ct. 387, 61 L. Ed. 791; *Griffin vs. United States*, 8 Cir. 168 F.2d. 457.

The power of Congress to control public lands may be exercised through vesting in the Secretary of the Interior the right to make rules and regulations necessary to effectuate the legislative policy. Regulations of the type here under consideration have long been held a valid exercise of delegated power. *United States vs. Grimaud*, supra. In *LaMotte vs. United States*, 254 U.S. 570, 65 L. Ed. 410, 41 S. Ct. 204, the Supreme Court held valid regulations of the Secretary of the Interior relating to grazing leases by members of an Indian tribe, affirming an injunction against defendants where their failure to conform was "not accidental, but intentional and persistent." Regulations issued by the Secretary of the Interior were upheld also in *United States vs. Travis*, W. D. Ky. 1946, 66 F. Supp. 413, and *United States vs. Johnston*, S.D. W. Va. 1941, 38 F. Supp.

4. See also *Fussell vs. United States*, 5 Cir. 1939, 100 F.2d. 995.

Defendants have the burden of showing that regulations are not clearly within the statutory authority. As was said in *United States vs. Watkins*, 2 Cir. 1949, 173 F.2d. 599, "Regulations having been duly adopted, the burden is on one who questions them to show their invalidity. *Montana Eastern Limited vs. United States*, 9 Cir. 1938, 95 F.2d. 897. And this burden can be carried only by showing as a minimum that the regulations are inconsistent with the underlying statute or are unreasonable or inappropriate. *United States vs. Morehead*, 243, U.S. 607, 37 S. Ct. 458, 61 L. Ed. 926; *Boske vs. Comingore*, 177 U.S. 459, 20 S. Ct. 701, 44 L. Ed. 846." Defendants here have not shown that the regulations are unreasonable or inconsistent with the statute, and it is my conclusion that the regulations are valid.

It is true that in most cases involving trespass of livestock on Government land the court has found an element of intent or wilfulness (or acts from which wilfulness could be inferred) on the part of the owner of the livestock. In *Light vs. United States*, *supra*, perhaps the leading case involving trespassing livestock on public domain, the court said:

"Even a private owner would be entitled to protection against wilful trespasses, and statutes providing that damage done by animals cannot be recovered, unless the land had been enclosed with a fence of the size and material required,

do not give permission to the owner of cattle to use his neighbor's land as a pasture. They are intended to condone trespasses by straying cattle; they have no application to cases where they are driven upon unfenced land in order that they may feed there * * *

“Fence laws do not authorize wanton and wilful trespass, nor do they afford immunity to those who, in disregard of property rights, turn loose their cattle under circumstances showing that they were intended to graze upon the lands of another.

“This the defendant did, under circumstances equivalent to driving his cattle upon the forest reserve * * *

“It appears that the defendant turned out his cattle under circumstances which showed that he expected and intended that they would go upon the reserve to graze thereon. Under the facts, the court properly granted an injunction.” See also: *Shannon vs. United States*, *supra*.

In *United States vs. Thompson*, E.D. Wash. N.D. 1941, 41 F. Supp, 13, the evidence disclosed that the defendant was “owner of a small number of cattle which have been and are straying on the United States national forest lands and grazing thereon.” There was “no evidence of deliberate or intentional driving his stock onto the Government's land. Defendant just simply permits his stock to be loose and

they graze upon his land, upon the lands of private owners and upon Government land * * *” In granting an injunction, the court said :

“At the trial, plaintiff relied upon two cases : Light vs. United States, *supra*, and Shannon vs. United States, 9 Cir., 160 F. 870, 875.

“The defendant attempts to distinguish the two cases on the ground that they both involved actual or intended trespasses upon the part of the owners of the cattle. While that is true, and strictly speaking, the two cases can only be of value in cases of similar import, nevertheless I am convinced from the language of the two opinions they compel the acceptance of the conclusion that the holdings would have been the same without the evidence as to intention of trespass. That is particularly true in the Shannon case * * *”

The facts and circumstances surrounding the several trespasses in this case were not so strong as those in the Light and Shannon cases to establish a “wilful trespass.” On the other hand, the Government here made a stronger showing than in the Thompson case. Were the trespasses here in fact wilful?

In a criminal action involving turpitude, “wilful” is “generally used to mean evil purpose, criminal intent or the like.” In an action which does not involve turpitude, the word “is often used without any such implication * * * it often denotes that which is

‘intentional, or knowing, or voluntary, as distinguished from accidental’ and * * * is employed to characterize ‘conduct marked by careless disregard whether or not one has the right so to act.’” *United States vs. Illinois Central Railroad Co.*, 303 U.S. 239, 58 S. Ct. 533, 82 L. Ed. 773—an action to recover a penalty for violation of a statute prescribing a limitation on period of continuous confinement for stock. The court continued: “* * * So, giving effect to these considerations, we are persuaded that it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.

The proof here indicates a “careless disregard” of the consequences and a “plain indifference” to the provisions of the statute. While there is no showing that defendants drove their cattle upon plaintiff’s land, defendants could reasonably anticipate that their livestock would drift onto plaintiff’s land and subject them to the penalty prescribed by statute. The action does not involve an isolated act of trespass. Rather there was evidence of acts of trespass on December 31, 1943, June 12, 1945, January 30, 1952, February 4, 1952, February 12, 1952, July 8, 1955, July 28, 1955 and December 17, 1955. It is my conclusion that the evidence was sufficient to establish wilful trespasses under the second, third and fourth counts and that plaintiff is entitled to judgment for the respective amounts proved under those counts.

Sixth Count

In the sixth count plaintiff seeks a permanent injunction. On November 30, 1956, Judge Charles N. Pray entered an order granting plaintiff's motion for a temporary injunction, in which defendants were enjoined from "driving and drifting, allowing to drift, herding or conveying any livestock on or upon, or permitting the same to be driven, drifted, allowed to drift, herded, or conveyed, or pastured, grazed, or fed on or upon any of the lands and premises within the exterior boundaries of the Crow Indian Reservation in the State of Montana, or any part thereof, during the pendency of this action, save upon any lands and premises lawfully within the possession of said defendants."

In granting the temporary injunction, Judge Pray considered the acts of trespass specified in the discussion of the second, fourth and fifth counts and in addition further acts of trespass on November 18th and November 20th, 1956. For the purpose of considering whether a permanent injunction should be granted, the court also received evidence at the trial of subsequent acts of trespass on March 21, 1956, March 29, 1956, April 9, 1956, December 12, 1956, January 17, 1957 and March 27, 1957. The continuing nature of the trespasses justifies a permanent injunction.

Defendants argue with respect to the first six counts that the action is in fact for the benefit of a white permittee of the lands in question, that no

damage has been shown to the tribe or Indian allottees, and that accordingly the Government has no right to maintain the action. It is true that in part at least these counts involve a controversy between defendants and the white permittee. In addition, however, it is alleged in the sixth count that the trespasses and overgrazing cause irreparable damage and injury to the inheritance of the lands. While no specific damage was shown to the lands in question, there was substantial evidence that overgrazing does in fact injure the lands. The penalties are for the use and benefit of the Tribe and its members.

The departmental regulations provide that it is "within the authority of the Secretary of the Interior to protect Indian tribal lands against waste" and that "overgrazing, which threatens destruction of the soil is properly considered waste." 25 C.F.R. 1956 Supp. 71.1.

It is well settled that "the Government has, with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers." *Camfield vs. United States*, 1897, 167 U.S. 518, 524, 17 S. Ct. 864, 866, 42 L. Ed. 260. The Government has the same rights with respect to lands held in trust for Indian tribes. *United States vs. West*, 1956, 9 Cir. 232 F.2d. 694; *United States vs. Gray*, 18 Cir., 1912, 201 F. 291; and *United States vs. Fitzgerald*, 8 Cir. 1912, 201 F. 295. "It is the right and the duty of the Government to maintain such suits as may be necessary for the protection of its Indian wards * * * And particularly is

this true where the United States holds lands in trust for the use and benefits of these wards and suit is necessary for the protection of the lands," (citing cases). *United States vs. Colvard*, 4 Cir. 1937, 89 F.2d. 312. See also: *LaMotte vs. United States*, *supra*.

It is admitted that title to the lands in question is in "plaintiff in trust for the Crow Indian Tribe or certain members thereof" and that the lands are "managed and supervised by plaintiff" through the Bureau of Indian Affairs. In my opinion this action is properly maintained by the Government for the use and benefit of the Crow Indian Tribe and its members.

Seventh and Eighth Counts

Under the seventh and eighth counts plaintiff seeks recovery of "penalties" for overstocking under a grazing permit issued by plaintiff to defendant R. B. Fraser. Plaintiff contends that the so-called "penalty" is rather liquidated damages. Defendant contends that it is in fact a penalty, and in the absence of proof of actual damages, there can be no recovery.

The grazing permit was issued pursuant to regulations prescribed by the Secretary of the Interior (25 C.F.R. 71) and accepted by the defendant-permittee, subject to its "conditions and the attached range control stipulations." Under this permit defendant was authorized to hold and graze 83 head of cattle on tribal land on the Crow Reservation within

Range Unit No. 19, the permit providing that it was issued with the understanding that a total of 124 head would be grazed on the unit, the carrying capacity of the privately owned or leased land being 41 head of cattle. Permittee agreed to pay \$16.778 per head for year long grazing on the Reservation land, or a total annual payment of \$1,392.61. The total number of cattle allowed on the unit was later modified to 123 head by reason of withdrawal of a 40-acre tract from the Reservation land, with the resulting reduction from 83 to 82 of the carrying capacity on the Reservation land.

This is a so-called on-and-off permit, for which provision is made as follows:

“On-and-off grazing permits will be granted to persons owning livestock which will graze on a range unit where only a part of such unit is Indian land. This permit will be granted for the total number of livestock to be grazed on the entire unit but the permittee will be required to pay grazing fees only for the estimated carrying capacity of the Indian lands involved.”

25 C.F.R. 1956 Supp., 71.20.

The grazing permit contains the following provision:

“It is further understood and agreed that if the permittee allows a greater number of livestock than the total number herein stipulated to graze upon this range unit of which the Indian range is a part, during the period this permit is

in effect, this on-and-off clause shall immediately become null and void and the stock in excess of the number upon which fees are paid to the Indians shall be considered as in a state of trespass and treated accordingly.”

Range regulation stipulations attached to the permit include:

“3. Unless the number of livestock specified in the permit is reduced by the Commissioner of Indian Affairs, the permittee will not be allowed credit or rebate in case the full number is not grazed on the area. However, if the number authorized is exceeded without previous authority, the permittee will be required to pay in addition to the regular charges as provided in the permit, a penalty equal to 50 per cent thereof for such excess stock and the stock will be held until full settlement has been made.”

“15. All permittees must avoid trespassing. In case of trespass the herder and packer may be excluded from the reservation. The owner is liable to prosecution for civil damages * * * The following acts constitute trespass:

(a) The grazing upon or the driving of any stock across the reservation without a written permit, or the grazing upon or the driving across any reservation in violation of the terms of a permit.” * * *

“(e) Violation of any of the terms of the grazing permit or crossing permit.”

Proceeding under Par. 3 of the Range Control Stipulations, the Government alleges in the seventh count an overstocking on or about May 24, 1954, of 182 head of cattle and 32 head of horses. Considering one horse as equal to one and one-half cow units results in an excess of 107 cow units. At one and one-half times the rate of \$16.778 per head, the amount claimed is \$2,693.19, less a set-off of \$687.51 by reason of forfeiture of a bond. The eighth count alleges a similar overstocking on or about November 4, 1954, of 196 head of cattle and 17 head of horses, or an excess of 98 cow units, resulting in a claim of \$2,466.66. Demand and refusal of the amounts claimed under these counts were alleged and proved.

The evidence sustains a finding that an excess of the number of cattle alleged in each count was on the range unit on the dates specified. With respect to the horses, the Government witnesses testified that they were unable to get close enough on either occasion to identify the brands. Defendant testified that it was possible two or three saddle horses belonging to him were on the unit on the respective dates, but that Indian horses ranged practically at will, and he was of the opinion that most, if not all, of the horses were wild Indian horses. The difficulty experienced by the Government employees in approaching the horses lends some support to that contention. In any event, it appears to me that the evidence is insufficient to support a finding that the horses belonged to defendant, except for two or three saddle horses admitted by defendant.

Defendant testified that the land within the range unit was used by him in the spring and fall as a gathering and roundup place for other cattle owned by him, and that at times in the summer there were considerably fewer cattle on the unit than were authorized by this permit. This, however, can be no defense in view of the fact that the permit contained no provision for average stocking or carrying capacity (as in *U.S. vs. Kirby*, 260 U.S. 423). In fact the Range Control Stipulations specifically provide that no credit or rebate will be allowed in case the full number is not grazed on the area. (Par. 3 *supra*). Nor was authority obtained as provided in the Range Control Stipulations for permission to drive livestock across the area, or for bedding or camping privileges (Par. 4). The permit itself did not authorize such use at the discretion of the permittee.

The Government contends that the provision for payment by permittee of regular charges plus 50 per cent for stock in excess of the number specified in the permit, is a provision for liquidated damages under the lease-contract entered into by the parties, and that since two distinct violations occurred the defendant *R. B. Fraser* is liable for both the May and November overstocking in the same year. Defendant contends that this provision must be construed as a penalty and that the plaintiff is limited to a recovery of proven actual damages. Defendant asserts further that even if the charges are construed as liquidated damages, in no event should he

be charged with both violations occurring in the same year. Are the charges sought by the Government in these counts in the nature of liquidated damages or penalties, and if the former is the defendant liable under both counts?

There is a third alternative—that under the on-and-off clause of the permit, *supra*, all excess cattle were “in a state of trespass” and to be “treated accordingly.” The regulations issued by the Secretary of the Interior provide that “The owner of any livestock grazing in trespass on restricted Indian lands is liable to a penalty of \$1.00 per head for each animal thereof together with the reasonable value of the forage consumed and damages to property injured or destroyed * * *” (25 C.F.R. 1956 Supp., 71.21.)

Giving effect to all of the provisions in both the permit itself and the range control stipulations thereto attached, it is my opinion that the Government had an election to treat the overstocking as a trespass and exact the penalty prescribed by Sec. 71.21 for each act of trespass or recover the penalty provided by Par. 3 of the Range Control Stipulations for the excess number of cattle.

The distinction between liquidated damages and penalties is set forth in the Restatement of the Law of Contracts as follows:

“No. 339. Liquidated Damages and Penalties.

(1) An agreement, made in advance of breach, fixing the damages therefor, is not en-

forceable as a contract and does not affect the damages recoverable for the breach, unless

(a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and

(b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation.”

(2) An undertaking in a penal bond to pay a sum of money as a penalty for nonperformance of the condition of the bond is enforceable only to the extent of the harm proved to have been suffered by reason of such nonperformance, and in no case for more than the amount named as a penalty, with interest.”

See also: *Steffan vs. United States*, 6 Cir. 1954, 213 F.2d. 266, 270 citing cases and this section of the Restatement. In view of the fact that overgrazing which threatens destruction of the soil is properly considered waste (25 C.F.R. 1956 Supp., No. 71.1), it cannot be said that an additional charge of 50 per cent for grazing privileges of livestock exceeding the established carrying capacity of the range is an unreasonable forecast of just compensation to the Indians for the harm done, and unquestionably such harm in any particular case would be difficult of accurate estimation. The charge of 150 per cent appears to meet the requirements set forth in the Restatement.

The distinction between liquidated damages and penalties was also considered by the United States Supreme Court in the case of *United States vs. Bethlehem Steel Co.*, 205 U.S. 105, 51 L. Ed. 731, 27 S. Ct. 450, where the court said:

“The courts at one time seemed to be quite strong in their views and would scarcely admit that there ever was a valid contract providing for liquidated damages. Their tendency was to construe the language as a penalty, so that nothing but the actual damages sustained by the party aggrieved could be recovered. Subsequently the courts became more tolerant of such provisions, and have now become strongly inclined to allow parties to make their own contracts, even when it would result in the recovery of an amount stated as liquidated damages, upon proof of the violation of the contract, and without proof of the damages actually sustained * * * The question always is, what did the parties intend by the language used? When such intention is ascertained it is ordinarily the duty of the court to carry it out.” “* * * we think it appears from the contract and the correspondence that it was the intention of the parties that this amount should be regarded as liquidated damages, and not technically as a penalty. This view is also strengthened when we recognize the great difficulty of proving damage in a case like this, regard being had to all the circumstances heretofore referred to.

As to whether the use of the word "penalty" is determinative, the court said:

"* * * It is true that the word 'penalty' is used in some portions of the contract * * * The word 'penalty' is used in the correspondence, even by the officers of the government, but we think it is evident that the word was not used in the contract nor in the correspondence as indicative of the technical and legal difference between penalty and liquidated damages."

See also: *Rex Trailer Co. vs. United States*, supra; *Meeker vs. Lehigh Valley Railroad Co.*, supra; *United States vs. Weaver*, supra (under first count).

It is my opinion that the penalty prescribed by Par. 3 of the Range Control Stipulations is in fact a provision for liquidated damages. The excess charge is a reasonable forecast of just compensation for the harm caused by the breach, and the harm is one that is incapable or very difficult of accurate estimation. I do not agree, however, with the Government's contention that it can recover more than once during a lease year. If the penalty is in fact liquidated damages, it must be based on the contract provision for year-round grazing, and it was not intended that the payment should be due each time overstocking was found to exist. Each overstocking might properly be considered an act of trespass under the on-and-off provision, in which event the Government would be limited to \$1.00 per head for each separate trespass. If there could be more than

one recovery under Par. 3 of the Stipulations, the amount would be an unreasonable "forecast of just compensation" and could not properly be considered liquidated damages.

The view of liquidated damages is supported by the Regulations issued by the Secretary of Interior on Bond Requirements, 25 C.F.R. 1956 Supp., No. 71.17 providing in part:

"(b) In lieu of furnishing a surety bond, a permittee may deposit at the time of the first payment of the grazing fees a sum equal to one-half of the annual grazing fees. This sum shall be held by the Area Director as a cash penal bond and may be applied to the grazing fees due for the last six months of the permit; Provided, That no breach of the permit has taken place. In all cases where a cash deposit is made in lieu of a surety bond, the permittee shall execute a proper power of attorney authorizing the Area Director to apply the cash deposit as liquidated damages in the event of any breach of the permit."

The amount which the Government has allowed as a set off in the seventh count is approximately one-half of the defendant's grazing fees for one year and must be presumed to have been deposited as a bond as provided above. It has been treated as forfeited by the Director to apply on the liquidated damages for the breach of the permit.

The situation with respect to these counts is completely different from that presented under the first count. In the first count there was no contractual relationship between the parties, and the defendant was a trespasser, without right, on restricted Indian lands. In the seventh and eighth counts, there was a breach of a contract between the parties, and a specific stipulation in the permits for the compensation to be paid for the breach. In the first count, it could reasonably be inferred from the Regulations that a true penalty was intended. In the seventh and eighth counts, it may reasonably be inferred from the bond provision of the Regulations that liquidated damages were intended.

The largest number of excess cattle at any time was 196 (eighth count). Defendant admitted that there were probably two or three of his saddle horses grazing on the unit. Three horses would be the equivalent of four and one-half cow units, making a total of $200\frac{1}{2}$ cow units. Deducting the carrying capacity of 123 cows, leaves $77\frac{1}{2}$ cow units in excess of the number permitted. 150 per cent of $77\frac{1}{2}$ units or $116\frac{1}{4}$ units times the rate per head of \$16.778 results in a total recovery of \$1,950.44. Deducting therefrom the sum of \$687.51 under bond forfeiture, results in the sum of \$1,262.93, for which judgment should be entered for plaintiff under the seventh and eighth counts, together with interest at 6% per annum from May 25, 1954.

Ninth Count

The permit involved in the seventh and eighth counts was terminated on December 31, 1954, by letter to defendant R. B. Fraser, dated November 26, 1954, in which plaintiff demanded the amounts claimed under the seventh and eighth counts, together with the sum of \$114.64 as grazing fees for the period December 1 to December 31, 1954 (Ex. 12). The evidence shows that this sum was not paid. Plaintiff accordingly is entitled to judgment against defendant R. B. Fraser for the sum of \$114.64 on the ninth count, together with interest at 6% per annum from December 31, 1954.

Plaintiff shall within ten days prepare and file draft of judgment in accordance with this opinion, and serve a copy upon defendants. Defendants shall have ten days thereafter within which to serve and file objections to the proposed judgment.

Done and dated this 1st day of November, 1957.

/s/ W. J. JAMESON,
United States District Judge.

[Endorsed]: Filed November 1, 1957.

In the District Court of the United States for the
District of Montana, Billings Division

Civil No. 1804

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. B. FRASER; R. B. FRASER, INC., a Corpora-
tion; R. B. FRASER, JR.; FRASER LIVE-
STOCK CO., a Corporation, and CHARLES
FRASER, Also Known as CHAS. FRASER,

Defendants.

JUDGMENT

Be It Remembered:

That the above-entitled cause came on regularly for trial before the above-entitled Court without a jury on July 2, 1957, the Honorable W. J. Jameson, Esq., United States District Judge, presiding; plaintiff being represented by Krest Cyr, Esq., United States Attorney, and Dale F. Galles, Esq., Assistant United States Attorney; and the defendants being represented by the firm of Kurth, Conner and Jones and C. W. Jones, Esq.; evidence was introduced by the respective parties and the cause was submitted to the Court upon briefs thereafter filed and by the Court finally taken under advisement. Thereafter and on November 1, 1957, the Court made and filed

herein its findings of fact and conclusions of law which are hereby referred to and made a part of this judgment by this reference;

Now, Therefore, by reason of the law and the premises,

It Is Adjudged:

1. That the above-named defendants, R. B. Fraser; R. B. Fraser, Inc., a Corporation; R. B. Fraser, Jr.; Fraser Livestock Company, a corporation; and Charles Fraser, their agents, servants, heirs, grantees, lessees, successors and assigns and all persons acting by the direction or authority of said defendants or any of them, be and they hereby are permanently enjoined from grazing, pasturing, or allowing to drift and graze, or permitting or allowing to be conveyed, or pastured, or grazed, or fed, any livestock on any of the lands and premises within the exterior boundaries of the Crow Indian Reservation, title to which is in the plaintiff, the United States of America, in trust for the Crow Indian Tribe or any member thereof or which is owned by any Crow Indian by patent containing a restriction against alienation without governmental approval; or otherwise interfering directly or indirectly, with the possession, use and enjoyment of said lands and premises by the plaintiff or its Indian wards; and from interfering, directly or indirectly, with the possession, use and enjoyment of said lands by any person through the contractual permission of the plaintiff by lease or grazing permit; except upon

any lands and premises lawfully within the possession of said defendants.

2. That the plaintiff recover from the defendant R. B. Fraser money damages as follows:

(a) On the second count of the complaint the sum of \$82.00 with interest at 6% per annum from February 13, 1952, to the date of this judgment.

(b) On the fourth count of the complaint the sum of \$12.00 with interest at the rate of 6% per annum from July 8, 1955, to the date of judgment.

(c) On the fifth count of said complaint, the sum of \$11.00 with interest at 6% per annum from July 28, 1955, to the date of judgment.

(d) On the seventh and eighth counts of said complaint the sum of \$1,262.93 with interest at 6% per annum from May 24, 1954, to the date of judgment.

(e) On the ninth count thereof, the sum of \$114.64 with interest at the rate of 6% per annum from December 31, 1954, to the date of judgment.

3. That plaintiff recover its cost of suit to be taxed herein as provided by the rules of Court. Costs \$328.62.

4. That plaintiff do have and recover nothing on the first count of the complaint.

Done and dated this 21st day of November, 1957.

/s/ W. J. JAMESON,
United States District Judge.

[Endorsed]: Filed and entered November 21, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given, That the defendants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 21st day of November, 1957.

KURTH, CONNER & JONES,

By /s/ C. W. JONES,
Attorneys for Appellants.

[Endorsed]: Filed December 16, 1957.

[Title of District Court and Cause.]

SUPERSEDEAS BOND ON APPEAL

Whereas, the above-named Defendants, R. B. Fraser; R. B. Fraser, Inc., a corporation; R. B. Fraser, Jr.; Fraser Livestock Company, a corpora-

tion, and Charles Fraser, also known as Chas. Fraser, have prosecuted an appeal to the United States Court of Appeals for the Ninth Circuit, to reverse the money Judgment and order granting a permanent injunction made and entered in the above-entitled cause by the Judge in the United States Court for the District of Montana, Billings Division, on the 21st day of November, 1957:

The conditions of this bond are such that the undersigned United States Fidelity and Guaranty Company is firmly bound unto the plaintiff, the United States of America, the sum of \$2,500.00, and that the appellants should discharge the judgment rendered by the Court of Appeals and pay all costs, interest and such damages as the plaintiff, the United States of America, might suffer by reason of the suspending of the permanent injunction granted herein, then this obligation shall be void, otherwise, to remain in full force and effect.

[Seal]

UNITED STATES FIDELITY &
GUARANTY COMPANY,

By /s/ JAMES D. HAINEN,
Attorney-in-Fact,
Montana Resident Agent.

[Endorsed]: Filed December 16, 1957.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The defendants-appellants herewith present points upon which they claim the Court erred:

I.

In holding and deciding that on February 13, 1952, cattle owned by defendant, R. B. Fraser and managed and herded by him or his agents and servants, to wit: eighty-two (82) cows, were found in trespass upon Indian trust land within the Crow Indian Reservation and on which said defendant, R. B. Fraser, did not have a lease, permit, license or privilege; and that said animals were allowed to drift and graze upon plaintiff's said lands wrongfully, wilfully, and without the consent of the plaintiff or the Indian owners thereof;

II.

In holding and deciding that on or about July 8, 1955, nine (9) horses and three (3) mules owned by the defendants, R. B. Fraser, Inc., and Fraser Livestock Co. were found in trespass upon Indian trust land within the Crow Indian Reservation, and on which said defendants did not have a lease, permit, license or privilege; and that said animals were allowed to drift and graze upon plaintiff's said lands wrongfully, wilfully and without the consent of the plaintiff or the Indian owners thereof;

III.

In holding and deciding that on or about July 28, 1955, eight (8) cows and three (3) calves owned by defendant, R. B. Fraser and managed and herded by him or his agents and servants were found in trespass upon Indian Trust land within the Crow Indian Reservation, and on which said defendant did not have a lease, permit, license or privilege; and that said animals were allowed to drift and graze upon plaintiff's said lands wrongfully, wilfully and without the consent of the plaintiff or the Indian owners thereof;

IV.

In holding and deciding that from time to time over the period from 1945 to the filing of this action, defendants have allowed cattle and horses to drift and graze upon the lands of the Crow Indian Reservation on which they held no valid lease or grazing permit, causing said livestock to graze and pasture on said lands; that the drifting and grazing of said livestock was done or permitted by the defendants, knowingly, wilfully, and without the consent either of the Indians affected thereby or the Superintendent of said Reservation, and in defiance of the plaintiff, and its officers and employees, having the supervision and management of said lands;

V.

In holding and deciding that the defendants or their agents and servants caused or permitted to drift or graze upon Indian Trust land within the Crow Indian Reservation and upon which defend-

ants had no permit, lease or privilege whatever certain livestock on June 12, 1945; January 28, 1952; January 30, 1952; February 4, 1952; December 15, 1955; March 21, 1956; March 29, 1956; April 9, 1956; November 20, 1956; December 12, 1956; January 17, 1957, and March 27, 1957;

VI.

In holding for the plaintiff and against the defendants on the plaintiff's second count, fourth count and fifth count of its complaint;

VII.

In holding and deciding that the plaintiff is entitled to a permanent injunction against the defendants and each of them and enjoining them or their agents and servants from allowing to drift and graze any livestock whatever on or upon, or permitting or allowing the same to be conveyed or pastured or grazed or fed on any lands or premises within the exterior boundaries of the Crow Indian Reservation, title to which is in the plaintiff in trust for the Crow Indian Tribe, or any member thereof;

VIII.

In holding and deciding that the defendant, R. B. Fraser, is liable to the plaintiff under the plaintiff's seventh and eighth counts of plaintiff's complaint;

IX.

In holding and deciding that the defendant, R. B. Fraser, is liable to the plaintiff for grazing fees under the ninth count of the plaintiff's complaint;

X.

In failing to hold and find that that certain regulation of the Department of the Interior of the United States, to wit: 25 C.F.R. 71.21 Subsection (b) are unreasonable and inconsistent with Section 25 U.S. Code 179, and thereby invalid;

XI.

In finding that the United States was the proper plaintiff and failing to find that the lessee or permittee was the party to bring any trespass or injunctive action herein;

XII.

In holding and deciding that the penalty clause under Subsection 3 of the Range Control Stipulations set forth in Plaintiff's Exhibit No. 9 was a liquidated damage clause and not a penalty clause.

Dated this 12th day of February, 1958.

KURTH, CONNER & JONES,

By /s/ C. W. JONES,

Attorneys for Defendants-
Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 12, 1958.

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME TO
FILE RECORD AND DOCKET CAUSE IN
APPELLATE COURT

The defendants-appellants move the Court for an order extending the time to file the record on appeal and docket the cause in the appellate court to and including the 14th day of March, 1958, upon the ground that the notice of appeal was filed on the 16th day of December, 1957, that forty (40) days from that date have not yet elapsed, and that because of the prior commitments of the reporter reporting said cause, he has been unable to make a transcript of the testimony in said action, additional time is necessary to properly prepare the record for the appellate court.

KURTH, CONNER & JONES,

By /s/ C. W. JONES,

Attorneys for Defendants-
Appellants.

[Endorsed]: Filed January 10, 1958.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE REC-
ORD AND DOCKET CAUSE IN APPEL-
LATE COURT

Upon motion of defendants-appellants, good cause appearing therefor:

It is ordered that the time within which to file the record and docket the above-entitled cause in the United States Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including the 14th day of March, 1958.

Dated this 16th day of January, 1958.

/s/ W. J. JAMESON,
Judge.

[Endorsed]: Filed and entered January 17, 1958.

In the District Court of the United States, in and
for the District of Montana, Billings Division

Civil Cause No. 1804

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. B. FRASER, et al.,

Defendants.

TRANSCRIPT OF TESTIMONY

Before: Hon. W. J. Jameson, Judge.

July 2, 1957—10:00 A.M.

Appearances:

DALE F. GALLES, ESQ.,

Ass't. U. S. District Attorney,
Counsel for the Plaintiff.

C. W. JONES, ESQ., of

KURTH, CONNER & JONES,
Counsel for the Defendants.

The Court: The case of the United States versus R. B. Fraser, et al., 1804, is set for trial. Is the plaintiff ready?

Mr. Galles: Plaintiff ready.

The Court: Is the defendant ready?

Mr. Jones: Your Honor, the defendants are ready. I wonder if we could have just a couple of minutes here to explain. I want to explain to my client two exhibits that are proposed to be stipulated and put in reference to the land situation. [1*]

The Court: We could take a 10-minute recess if you like. I might also call attention to the pretrial order that's been signed by Mr. Galles, and it has been signed by the court. I think it is agreeable isn't it?

Mr. Jones: I have a copy of it.

The Court: If you will sign that, then we can file.

(Whereupon, a short recess was here taken; court resumed pursuant to recess, parties present the same as before.)

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

The Court: Is the defendant ready?

Mr. Jones: Defendant ready, your Honor.

The Court: The Government may proceed.

Mr. Jones: Your Honor, at this time, if I may, we would like to file the pretrial order, it shows that——

The Court: Provide for an Amended Answer? That's setting up the additional defense for 1943?

Mr. Galles: Yes. If it please the Court, by stipulation of counsel, as I understand it, the Government offers in evidence, Plaintiff's Exhibit No. 1, which is a map of the Crow Indian Reservation, and it may be received in evidence in this cause.

Mr. Jones: We will so stipulate, your [2] Honor.

The Court: The exhibit is received.

Mr. Galles: The Government offers in evidence, Plaintiff's Exhibits Nos. 2 and 3, and I understand they may be received in evidence as exhibits, subject to further explanation to show relevancy.

The Court: That is agreeable. Plaintiff's Exhibits 2 and 3 are received in evidence.

MR. URBAN LANDON

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles.

Q. Will you state your name?

A. Urban Landon.

Q. Where do you live?

A. Crow Agency.

(Testimony of Urban Landon.)

Q. What do you do?

A. I work for the Fox Oil Company in Hardin.

Q. Did you formerly work for the Bureau of Indian Affairs? A. I did.

Q. When was that?

A. From '38 to about '45.

Q. That is 1938 to 1945? A. Yes, sir. [3]

Q. What was your capacity, Mr. Landon?

A. Well, I was range guard towards the last.

Q. And what did that include in your duties?

A. Well, I was running down all trespasses and counting cattle when they turned them in and when they took them off the units.

Q. Did you have occasion to make a count of some cattle in 1943 on the Crow Indian Reservation, with reference to the defendants in this action, or any of them? A. Counted some sheep.

Q. Some sheep? A. Yes.

Q. Do you have an independent recollection of how many and where that occurred?

A. Well, I don't, I can't recall just off-hand, but it was over on the Pryor country over there.

Q. Did you execute an affidavit in connection with the count of those sheep, Mr. Landon?

A. Yes, sir, we always did, every time we went out and counted.

Q. And you did in this case? A. Yes.

Mr. Galles: Your Honor, I wonder if we might have the motion for preliminary injunction, to which is attached this witness' original affidavit? [4]

(Court handing counsel document.)

(Testimony of Urban Landon.)

Q. Mr. Landon, I am referring now to a document on file in this cause, entitled "Motion for Preliminary Injunction," filed May 3rd, 1956. I want to call your attention to the last page that is attached to that motion and ask you if your signature appears thereon? A. Right there.

Q. That is the middle of the three signatures?

A. The middle of the three signatures, yes, sir.

Q. When did you execute this affidavit?

A. Well, it was in the fall.

Q. Well, I will call your attention to the date, by the Notary Public, the 3rd day of January, 1944?

A. Correct, that is right.

Q. Now, if you are able to review this affidavit, would you be able to state that the matters contained therein were true at the time you made the affidavit? A. Yes, sir.

Q. All right, I wonder if you would do so with reference to the sheep?

Mr. Jones: Your Honor, we will object to this testimony on the grounds and for the reasons that no proper foundation has been laid for the witness to testify from this instrument.

The Court: Well, I think so far he simply [5] asked the question, asked him to refresh his recollection from that.

Mr. Jones: Oh, I thought he asked him to testify.

Mr. Galles: I may go further and ask him to testify, we don't offer this as a refreshing of a pres-

(Testimony of Urban Landon.)

ent recollection, but as a past recollection recorded, that is the basis upon which we are attempting to lay the foundation.

The Court: Objection overruled.

Q. All right, will you state then, referring to the affidavit that you have in your hand, when you observed the sheep that I have referred to, that you counted on the day that you have referred to in your affidavit?

Mr. Jones: We would like to interpose our objection at this time that no proper foundation has been laid, and that it is incompetent and irrelevant.

The Court: Objection overruled, and I might say with respect to the defense of the statute of limitations, I presume that is one question you are raising, Mr. Jones, on the 1943—the court has read the memorandum submitted by both parties and has not reached a conclusion with respect to that. We will [6] reserve a ruling until later, but I am going to permit the evidence to go in subject to your objection, and if you so desire, it may be a continuing objection to all testimony with respect to the 1943 transaction, that is Count 1, with respect to Count 1, and then the court will consider that later.

Q. On what date was it you observed the sheep, Mr. Landon?

A. The 3rd day of January, or we counted them the latter part of December, and we made an affidavit out on the 4th of January.

Q. Well, I want to know when you counted them?

A. In the afternoon.

(Testimony of Urban Landon.)

Q. Of what day? A. December 31st.

Q. Where was it? A. On Unit 20-A.

Q. Will you repeat your answer, so the court reporter can get it into the record, please?

A. 20-A.

Q. When you say "20-A," what do you refer to?

A. That was the unit number at that time.

Q. And what is a unit?

A. Well, that was the block set out for a certain permit, a block of land, if I had a map I could—it has been so long ago I have got to refresh my [7] memory.

Q. Well, that is what you have the affidavit in your hand for, is because it is so long ago and it is to refresh your recollection, I wonder if you would step to Plaintiff's Exhibit No. 1, which is on an easel, and point out according to that map of the Crow Indian Reservation, where you saw the sheep that you are referring to.

A. Well, here is one.

Q. Now, that is in what section, township and range?

A. Section 36, 2 South, and 3 East, 3 South, 2 South, and 27 East, 3 South and 26.

Q. Now, will you repeat again the section, township and range, please?

A. Section 36, Township 3 South, and range 26 East.

Q. And is there any particular part of Section 36 in which you found the sheep?

A. Southeast quarter of the Northeast quarter.

(Testimony of Urban Landon.)

Q. And that is marked in red on Plaintiff's Exhibit No. 1? A. That is right.

Q. How many sheep were observed at that location on that day?

A. I think a thousand head, 1200.

Q. Were there any identifying marks on the 1200 sheep you found at that place on that day?

A. Yes, they was branded with an "8," 1+, and Circle F. [8]

Q. What was the first part of your answer?

A. Figure 8, kind of like an 8, like that, and then there was a 1, kind of a cross, and then some of them branded with a circle with the F inside.

Q. Did you observe any other sheep on any other location on that day?

A. On that day we counted some right down in here.

Q. Now, in what section, township and range are you referring?

A. Well, it is 4 South, township 4 South, range 25 East and section—well, it is sections 12 and 13, counted the sheep right on this side, south of the coulee there on the ridge there, I remember that.

Q. And is that area that you are describing where you found more sheep marked in red on Plaintiff's Exhibit No. 1? A. That is right.

Q. And, incidentally, the dates 12/31/43, is written alongside each of the two places that you have identified? A. Right.

Q. Would you resume the stand again, please?

(Witness resumes witness stand.)

(Testimony of Urban Landon.)

Q. In your official capacity as range guard, is that what you were at the time? A. Yes, sir.

Q. For the Crow Indian Agency? [9]

A. Yes, sir.

Q. Did you know who owned or had control of the land on which you found these two sets of sheep?

A. Well—

Q. You can answer that yes or no, do you know who owned or controlled? A. No, I don't.

Q. I don't believe I asked you how many sheep you found on the second description you gave on that date, how many did you find?

A. 1,085 head.

The Court: How many?

A. 1,085.

Q. How were these sheep marked or branded, if they were?

A. Well, they was branded with an 8 and Circle F.

Q. Were they branded in the regular manner sheep are branded? A. Yes, sir.

Q. How was that? A. With paint.

Q. Do you remember the color? A. Black.

Q. Black? A. Yes, sir.

Q. Do you know whose sheep these were?

A. Well, the herder told us it was R. B. Fraser's.

Mr. Jones: We will object— [10]

The Court: Objection sustained.

Mr. Jones: And ask that the answer be stricken, because the question has been asked and answered, and this answer is hearsay testimony.

(Testimony of Urban Landon.)

The Court: The answer may be stricken.

Q. Do you know who the herder was, do you know his name? A. No, I don't remember.

Q. Pardon? A. No, I don't remember.

Q. Mr. Landon, did you make a check of the records in the agency office to determine who owned the land or had control of the land which you found the sheep you have described—I will ask you again to refer to your affidavit?

A. Who owned the land or who owned—had the permit at that time?

Q. Who owned it or had control of it by permit or lease or otherwise?

(No reply.)

Q. First of all, could you tell me whether or not this was allotted land or not?

A. Yes, it was allotted land.

Q. To whom was it allotted?

A. Well, by gosh, Big Hat, I think, was one of the allotments.

Q. Is there a number that you refer to? [11]

A. Allotment 2118.

Q. Now, on which description was that?

A. That would be in the Southeast quarter of Section 32, Township 3 South, Range 21 East, well, that is allotment 2432, and 2118 is the Southeast quarter of the Northeast quarter of Section 36, 3 South, 26 East.

Q. And that allotment is the same land on which

(Testimony of Urban Landon.)

you first described the sheep that you found on December 31, 1943, is that correct?

A. That is right.

Q. And with reference to the land on which you found the second band of sheep, do you know whose allotment that was?

A. That was allotment 3590, and we found the allotment by finding the section corner of Section 12, Township 4 South, Range 25 East.

Q. Do you know what name that allotment is under? A. I can't recall right off-hand.

Q. It doesn't state in your affidavits?

A. No, it doesn't state.

Mr. Galles: You may examine.

Cross-Examination

By Mr. Jones:

Q. Mr. Landon, when you made this affidavit, do you know who made up the affidavit?

A. I think Joe Mast typed it. [12]

Q. Joe Mast typed it? A. Yes, sir.

Q. And he was the forester at the time?

A. Yes, sir.

Q. Where is Mr. Mast now?

A. I don't know where he is.

Q. I realize this has been a long time ago since you were out there in this area and saw those sheep, do you recall anything other than what is on this affidavit in reference to that?

A. No, I don't. Bill, it has been too long ago.

(Testimony of Urban Landon.)

Q. Do you recall at the time you were a range guard, were you stationed out in this area, or what was your job at that time?

A. Well, I was all over the reservation, whenever somebody would report a trespass case or one of the cattle men had some cattle to count or turn in or take off, why they would send me out to do it.

Q. And did you spend your time in the field?

A. Most of it.

Q. Most of it? A. Most of it.

Q. Who usually reported these trespasses to you? A. Well, the head forester.

Q. Mr. Mast?

A. No, Mr. Buxton was head forester, Mr. Mast was junior forester. [13]

Q. And would Mr. Mast and Mr. Buxton usually go out with you?

A. Lots of times they did, yes.

Q. With reference to this affidavit, do you recall whether or not—did you make any examinations of the Crow records at the time this affidavit was made out, you yourself, that is?

A. In the office?

Q. Yes.

A. Well, I generally read them when—before I signed them.

Q. The affidavit? A. Yes.

Q. But you didn't examine the records of the Crow office?

A. Well, we generally took notes right out in

(Testimony of Urban Landon.)

the field, see, we had our plat books and our notebooks and right out in the field with us all the time, and we could find a cornerstone, we would mark it down in our plat book.

Q. I see, and you are certain that this is the land that these sheep were in, this area at this time?

A. Yes, sir.

Q. You are certain as to the exact identification say in this one instance, the Southeast Quarter of the Northeast Quarter of Section 36?

A. Yes, sir.

Q. Well, how did you identify that point at that time? [14]

A. By finding cornerstones of the sections, different sections and then we would go and find a cornerstone, it is all pretty well marked in that country, that part of the reservation.

Q. Did you find these cornerstones or did Mr. Mast or Mr. Buxton find them?

A. We found them all together, generally all looked for them.

Q. Do you recall now finding that cornerstone at that time

A. Yes, I remember finding the cornerstones now.

Q. Well, did you in reference to this, making out this report or affidavit, do you know who had the land leased at the time?

A. Well, Carbon County Livestock Association had it first, and then I think Cormier's got it after

(Testimony of Urban Landon.)

that, they was in the Carbon County Livestock Association at one time.

Q. And they had it leased at that time?

A. Yes, sir.

Q. Do you know what kind of a lease that was?

A. It is a grazing lease, five year permit.

Q. One of these grazing leases, do you know whether it is the same kind of a grazing unit permit that they have now?

A. I don't know whether it is just—I imagine it runs [15] just about the same, I probably—some difference in the clauses and the range per head.

Q. Do you recall who informed you of this trespass? A. Well, Mr. Stanton did.

Q. Did you count these cattle or this livestock at the time these sheep—did you count the sheep?

A. Yes, sir.

Q. Did you count the sheep on Section 12, Township 4 South, Range 25 East?

A. Yes, sir.

Q. Did you yourself count them?

A. Yes, sir.

Q. Did Mr. Mast count them?

A. Mr. Mast counted them and Mr. Buxton counted them.

Q. All three counted them all?

A. Yes, sir.

Q. Then you are absolutely—you are pretty sure in your own mind that this—the Carbon County people had a permit on this share?

(Testimony of Urban Landon.)

A. I am pretty sure.

Q. I see, thank you.

Examination

By the Court:

Q. Mr. Landon, I am not entirely clear on the brand on these sheep in the East Half of Section 36, do I understand that some had one brand and others had another brand? [16]

A. Well, there was some in different band see, some sheep had some like this figure 8 here, and some had this 1 plus and some had this Circle F.

Q. So there were three different brands?

A. Three different brands.

Q. Some had the 8, or what appeared to be the figure and some a 1 plus?

A. 1 plus or 1 cross, and the other is, some had the Circle F.

Q. Some had the Circle F? A. Yes, sir.

Q. Do you know how many?

A. No, I couldn't, that would be pretty hard to count.

Q. But there were the three different brands?

A. Yes.

Q. What about that sheep that you found on Sections 12 and 13, did they all have the same brands?

A. Well, yes, they was pretty much the same brand on all of them, that is they had the Circle F and the 8 and the 1 plus on them.

(Testimony of Urban Landon.)

Q. Now, do I understand that some had the Circle F, and some had the 8 and some the bar?

A. Yes, sir.

Redirect Examination

By Mr. Galles:

Q. Mr. Landon, I want to refer to this part of your affidavit with reference to Section 36 I believe [17] it is, yes, that is the first count that you testified here today? A. 36.

Q. I will point out the paragraph to you.

A. Section 36, here it is.

Q. Now, I notice in your affidavit that you say that these sheep were branded Circle F and identified as R. B. Fraser's? A. That is correct.

Q. I don't see in your affidavit where there were part of those 1,085 sheep that had any other brand on than the Circle F, just to get the record straight, do you have a recollection that there were other sheep that had a different brand than the Circle F?

A. Don't this right here, isn't that the 8 there?

Q. No, that is a Circle F.

A. Well this one before, that looks like the 8 and Circle F.

Q. Well, it looks to me like it was a figure that is crossed out, I don't know, we will have to—

A. Okay, well anyway, there was in that 1,085, there was branded with Circle F.

Q. But you don't know whether or not that part of your affidavit shows an 8 or not, you don't know?

(Testimony of Urban Landon.)

A. I couldn't swear it, it looks like and it looks like it has been crossed out, maybe the judge could——

Q. Whose handwriting is that in? [18]

A. Joe Mast's

Q. Does your initial appear there?

A. Right there.

Q. And this is the portion of the affidavit that is written in with pen, whereas the remainder of it is typewritten? A. That is right.

Mr. Galles: That is all.

Recross-Examination

By Mr. Jones:

Q. Mr. Landon, are these corners easy to identify up there? A. Yes, they are.

Q. Do you know how, how they are marked?

A. Well, a cornerstone is marked with a 1 and dash and 4, and the section corners is marked with a township and range whatever is on it, whatever one you find.

Q. And when you identify these, did you locate the corner section corner? A. Yes.

Q. Or was it the quarter corner?

A. Well, we found the section corners.

Q. Did you find any quarter corners?

A. Yes, there is several quarter corners over there.

Q. Did you locate the quarter corner of the Southeast Quarter of the Northeast Quarter of Section 36, or do you recall? [19]

(Testimony of Urban Landon.)

A. Well, I don't recall that, I don't recall it, but I am pretty sure that—I don't recall we ever found quarter corners or not.

Q. Well, other than this affidavit, could you testify whether you located the corner of Section 36, or not, Township 3 South, and Range 26 East?

A. Yes, I think we found them corners.

Q. Mr. Landon, were you present when this affidavit was made up or were you just present to sign it?

A. Well, I don't remember whether I was in the office that day or not, sometimes I was out and they would make these, they would take our notes and they would make—type it up, type up the affidavits when we would come in, we would have to sign them and they would hand them to us and we would read them and sign them in front of the forester.

Q. Do you know who gave the typist the information as to this affidavit?

A. He took it off our notes, that we took out in the field.

Q. Do you know whether or not these were—this affidavit was taken off your notes or not?

A. There was some of it, yes.

Mr. Jones: No further examination.

(There being no further examination, the witness was excused.) [20]

DALE J. BUXTON

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name?

A. Dale J. Buxton.

Q. Spell the last. A. B-u-x-t-o-n.

Q. Where do you live and what do you do?

A. Live in Billings, I work for the Bureau of Indian Affairs.

Q. Did you work for the Bureau of Indian Affairs in 1943? A. Yes.

Q. In what capacity?

A. Range conservationist.

Q. Was that——

A. Detailed out of Billings, I worked out of the Regional Office.

Q. Out of the Regional Office? A. Yes.

Q. I will hand you an affidavit that purports to have your signature on it, that is attached to a motion for a preliminary injunction filed in this action, and ask you if your signature does appear on there?

A. Yes, right there, the last one.

Q. All right, I wonder if you would review just the 3rd, [21] 4th and 5th paragraphs and see if you have a recollection of having executed that affidavit?

A. Yes, after reading it over I do.

Q. Do you have a recollection now of whether the matters stated in there are true?

A. At the time it was written up, yes.

(Testimony of Dale J. Buxton.)

Q. You have no independent recollection now that those matters are true? A. Yes.

Q. Referring to the 4th paragraph, the end of which contains some handwriting or printing by ink, and referring also to Mr. Landon's testimony about the brands, do you know whether or not there were brands other than the Circle F on that 1,085 head of sheep, or can you tell from the affidavit?

A. Circle F is the only ones on that.

Q. That is the only brand, what about that little figure in the front of the Circle F, can you explain that?

A. He has got an 8 there, I don't remember whether that's—that was written in afterwards, it must be branded 8 and Circle F.

Q. Mr. Buxton, I have had two pieces of paper clipped together, marked Plaintiff's Exhibit 4, and ask you if your signature appears on either or both of those? A. Yes.

Q. Now, I will ask you to refer to the longer page, the second sheet, and ask you if that is the original [22] typewriting of the affidavit that you have been testifying from, which is attached to the motion? A. This is the original, I guess.

Q. Exhibit 4 is the original typewritten sheet of the affidavit attached to the motion?

A. That is right.

Q. Now, referring your attention again to the brand, Circle F, of the 1,085 head of sheep, can you state now whether there were sheep of that group that had other brands on?

(Testimony of Dale J. Buxton.)

A. According to this, Circle F is all I can go by.

Q. It shows the Circle F and no other brand on those 1,085 band? A. Circle F is all.

Q. Do you have any independent recollection of where the sheep were other than what is stated in the affidavit that you have in your hand?

A. No.

Q. Just whatever is there?

A. What is in there is all I can.

Q. You say it was a fact at the time you made it?

A. At the time we made the affidavit, yes.

Mr. Galles: That is all.

Cross-Examination

By Mr. Jones:

Q. In other words, you have no independent recollection of this transaction, whatever, other than what is in [23] this affidavit, is that right?

A. No, it is too long ago, I couldn't—at the time this affidavit was written, why it was right.

Q. Do you know who prepared this affidavit?

A. Joseph Mast typed it.

Q. And all you did is sign it, is that right?

A. Yes, well, I was there when he typed it of course.

Mr. Jones: That is all.

(There being no further questions, the witness was excused.) [24]

LESLIE W. WESTBERG

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name?

A. Westberg, Leslie W. Westberg.

Q. Where do you live?

A. I am at Grass Range, Montana, at the present time.

Q. What do you do?

A. Well, I am working for a party by the name of Lawrence Nelson and Al Nelson.

Q. Al Nelson?

A. Six and a half miles south of Grass Range.

Q. Did you ever work for R. B. Fraser?

A. Yes, sir.

Q. That is the same man sitting in the courtroom here today? A. Yes, sir.

Q. When did you work for him?

A. Well, if I can remember right, I believe it was in '41, '42 and '43.

Q. What did you do for him?

A. Just herded the sheep, I was just a sheepherder.

Q. Were you employed by Mr. Fraser on December 31st, 1943?

A. On December 31st, 1943, no I wouldn't say for sure whether I was in '43 or not because you see I was [25] called in the service and I got discharged in '43.

(Testimony of Leslie W. Westberg.)

Q. What part of '43?

A. Well, I went in in '42 and I was discharged in '43.

Q. What part of '43?

A. In the spring of '43.

Q. And when you got discharged what did you do?

A. Well, I went back to work for Bob Fraser.

Q. That is the same man here? A. Yes.

Q. How long did you work for him when you came back from the service?

A. Until that fall.

Q. In the fall? A. Yes.

Q. Do you know what part of the fall?

A. Well, it was along about haying time.

Q. When would that be?

A. Well, along the late part of July or August.

Q. I see. When you worked for him during those months of 1943 did you herd sheep at that time for Mr. Fraser? A. Yes, sir.

Q. And were any of those sheep marked or branded? A. Yes, sir.

Q. With what brands? A. Circle F.

Q. Were those Mr. Fraser's sheep?

A. Yes, sir, all of them. [26]

Q. How do you know it was Circle F that they were branded?

A. Well, I will tell you, I was working for the same party that he bought the sheep from see, and when I moved the sheep down here, why I insisted to Mr. Fraser, about making the Circle F and put

(Testimony of Leslie W. Westberg.)

an F in the center for the brand, and he said that's just fine and dandy, I will just have that made and he went ahead and had it made and that's what he used all of the time.

Q. Did you do any of the branding yourself?

A. On some of them, I never branded them all, but I branded lots of them, branded lambs and branded old ones, too, after shearing.

Q. Were there any sheep that had a figure 8 or 1 plus on as far as you knew? A. No, sir.

Mr. Galles: You may examine.

Cross-Examination

By Mr. Jones:

Q. Mr Westberg, is Mr. Fraser the only one that owns sheep that you were herding in 1943?

A. Yes, sir, he was.

Q. Did anybody else have an interest in these sheep, to your knowledge?

A. None whatsoever as I know of.

Q. Did a man by the name of Jeffries from Joliet have [27] an interest?

A. Jeffries was my camp tender.

Mr. Galles: What?

A. Camp tender.

Mr. Jones: That is all.

(Testimony of Leslie W. Westberg.)

Redirect Examination

By Mr. Galles:

Q. When you say Jeffries was your camp tender, what do you mean? What did he do?

A. Well, like when you are out in the sheep wagon, see, there has got to be someone to bring you groceries and stuff like that, and bring out salt for the sheep. Well, that's what we call a camp tender, see. They are supposed to make a trip once a week with some grub or something like that, to see if the sheepherder wants anything; but lots of them, you know, they just let a sheepherder stay out there quite awhile whether he has got anything to eat or not.

Q. And do you know whether Jeffries owned any of these sheep you herded?

A. Jeffries didn't own any of them that I herded.

Mr. Galles: That is all.

Recross-Examination

By Mr. Jones:

Q. How did you know that Jeffries didn't own any of the sheep? [28]

A. Well, if he did own any of them I never did hear anything ever said, anything about that he did.

Q. Mr. Jeffries was your direct supervisor, is that right?

A. Just the camp tender, yes.

(Testimony of Leslie W. Westberg.)

Q. Wasn't he your only contact, between you and Mr. Fraser, while you were out there?

A. Yes, sir.

Q. And he give you instructions, is that right?

A. Well, he got his orders on what to do and if I needed any help he got that from Mr. Bob Fraser and then he would come out there and told me all about and move the camp or something. If I had to move the sheep and different range or something, you know, I got my instructions from him.

Mr. Jones: That is all.

Re-redirect Examination

By Mr. Galles:

Q. You had talked to Mr. Fraser though, while you worked for him?

A. Oh, yes; he come out several different times to the camp while I was herding sheep and visited me to see how I was getting along.

Mr. Galles: Thank you, that is all.

(There being no further questions, the witness was excused.) [29]

GORDON POWERS

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name and where you live?

A. Gordon Powers; I live at Crow Agency.

(Testimony of Gordon Powers.)

Q. What do you do there?

A. I am—my present title is Land Operations Officer.

Q. How long have you held that position?

A. Two years with that title. I have been at Crow, let's see, ten years last March. I came there the first of March, 1947.

Q. That is with the Crow Indian Agency?

A. Yes.

Q. How is that connected with the Bureau of Indian Affairs?

A. That is the reservation headquarters for the Bureau of Indian Affairs, to administer the Crow Indian Reservation.

Q. What are your present duties, Mr. Powers?

A. My present duties are to supervise the administration of the branch of land operations, includes range management, soil and moisture conservation and irrigation.

Q. There has been some reference here to permits and leases, does your office have anything to do with either or both of those?

A. My branch administers and is custodian of the records [30] of the grazing permits, not for leases.

Q. Would you tell us just how a grazing permit is distinguished from a lease so that we fully understand?

A. Well, a grazing permit is a revocable contract; it is to grant grazing privileges.

Mr. Jones: Your Honor, we will object to this

(Testimony of Gordon Powers.)

line of testimony and say that it is not the best evidence; this is an interpretation that he is giving now of an officer of the Indian Department, and I think the grazing permit itself is the best evidence of what kind of an instrument and what its legal effect is; that is our position.

The Court: Objection sustained.

Q. Mr. Powers, have you seen the complaint filed in this action or a copy of it? A. Yes.

Q. And are you familiar—what is attached to the complaint as Exhibit B; it is entitled “Grazing Permit”? A. Yes.

Q. Now that is what you refer to when you say a grazing permit; it is that type of contract or instrument? A. Yes. [31]

Q. Now, we refer to a lease between what parties are; is the lease entered into?

A. Well, a lease—there are two types of leases, lease contracts that are used by the Crow Indians. One is a competent lease, and the other type is termed “Office lease.” It is a lease subject to the approval of the superintendent, this office lease I refer to. Those are the two types of leases that are used, and the parties—

Q. And the office lease is between one of the Indians and some other person?

A. The office lease is the contract between the Indian landowner and the lessee, whoever he may be, with approval of the superintendent to make it effective; it is negotiated or advertised for bid, either one, and, if it is negotiated, it is negotiated

(Testimony of Gordon Powers.)

between the Indian landowner himself and the prospective lessee, then it is not a valid contract without the approval and signature of the superintendent.

Q. Now when you say the Indian landowner, that means that he has title to the land?

A. He holds a trust title. It is a title of ownership subject to the trusteeship management of the United States Government.

Q. Is that what you would call restricted land?

A. That is right.

Q. Would that be the same as allotted land?

A. Yes. [32]

Q. All right now, a competent lease is between what type of owner and a third, another party?

A. The competent lease is negotiated by a Crow Indian or Indian owners, more than one, one or more, not to exceed five in number, who have been designated or declared competent under certain legislation, that gives this, which legislation places the responsibility for and privilege of negotiating a competent lease contract for agriculture or farming or grazing purposes, without the approval of the superintendent with whomever they may choose as lessee.

Q. That is because they are competent to handle their own affairs, I assume?

A. That is because they are eligible under the legislation to negotiate such a contract and they may not exceed five in number.

Q. Does that mean that they have a fee simple title to the land or is that likewise restricted land?

(Testimony of Gordon Powers.)

A. That is also under a trust restricted patent deed, trust deed, and it is known as restricted ownership.

Q. Mr. Powers, did you bring with you certain records of your office with reference to count one in the complaint that you say you are familiar, that is two bands of sheep, in connection with the notice and demand for payment of certain monies addressed [33] to R. B. Fraser?

A. Yes, sir; I have.

Q. Will you produce that record, please?

Mr. Jones: Your Honor, so I have it, our objection in reference to this goes to every witness' testimony.

The Court: That is correct, a continuing objection so the record may be clear, that the defendant has a continuing objection as to all witnesses with respect to any evidence on count one.

Q. What are you referring to now, Mr. Powers?

A. I am referring to a letter sent by registered mail.

Q. No, I mean what kind of record?

A. A carbon copy of correspondence retained in the office files.

Q. Is that part of the official records of your office? A. Yes, it is.

Q. Are you the custodian of this record?

A. Yes.

Q. I wonder if you could extract a carbon copy from your file and I will have it marked.

(Testimony of Gordon Powers.)

Mr. Jones: Well, your Honor, at this time we think that if they are going to submit, they should submit the whole record, rather than piecemeal.

Mr. Galles: We don't want to encumber the record and there are certain [34] things I don't think are relevant, our purpose is to show a demand for payment and failure to pay, in accordance with our allegations of count one of the dollar a head penalty as alleged.

The Court: I don't believe it is necessary to show the full record, if Mr. Jones wants to——

Mr. Galles: You can look at the whole record to see if there is anything else you want.

Mr. Jones: All right.

Q. I will hand you Plaintiff's Exhibit 5 and ask you again if this is part of your official records kept in the course of business of which you are the custodian? A. Yes.

Q. Will you state what it is?

A. It is a carbon copy of a letter sent by registered mail to R. B. Fraser, Billings Hudson Company, Billings, Montana.

Q. What is the date?

A. Dated January 17th, 1944, and signed with the signature of Robert Yellowtail, superintendent, this is a carbon copy.

Q. In the ordinary course of business, what happened to the original in your experience in your office? [35]

A. The original is the one which is mailed and dispatched to the recipient, the addressee.

(Testimony of Gordon Powers.)

Q. As part of Exhibit 5, is clipped a return receipt for registered mail, is that part of your file and records also, Mr. Powers? A. Yes.

Q. And does that show that Mr. Frazer received the original?

A. It was signed on January 20th, 1944, and the signature is J. G. Williams, who has signed as agent for the addressee.

Mr. Galles: We offer in evidence Plaintiff's Exhibit No. 5.

Mr. Jones: We will object on the grounds and for the reasons that it is not the best evidence and no proper foundation has been laid.

Mr. Galles: We will offer it as a business record, your Honor.

The Court: I think it is admissible as a business record under the Business Records Act, the objection is overruled and the Exhibit is received.

Q. Mr. Powers, did you make a search of your records to determine whether the payment demanded in Exhibit 5 had been made by Mr. Fraser or anyone else on his behalf? [36] A. Yes, I did.

Q. What did you find?

A. I found no evidence of any payment ever having been received by the agency office.

Q. Does that amount show on your records to be still due and owing?

A. Well, I don't know just how to answer that, the records don't show any evidence of payment having been received, and the record does show that there was a demand made which has been unfulfilled

(Testimony of Gordon Powers.)

so far as my official records are concerned, that action has never been satisfied or completed.

Q. Do you have in your office and among your records anything to show with reference to whether Mr. R. B. Fraser had the consent of any Indian or the tribe to have livestock on any of the lands alleged in the complaint? A. Yes, yes.

Q. What is that?

A. It will be necessary to explain how the basis upon which these grazing permits are issued, I think to show where the consent comes from, or lack of consent.

Q. All right, explain it as best that you think best?

A. Well the grazing permits are issued as a result of advertisement for competitive bid, covering certain designated lands for grazing purposes only, and [37] before those lands may be actually added or listed as a part of this grazing permit contract, the individual allotments, the owners of these individual allotments must sign a simple power of attorney, identified as a form by the form authority to grant grazing privileges, and that power of attorney authorizing the superintendent to grant these grazing privileges under a grazing permit according to the Code of Federal Regulations, for grazing purposes only, and then the superintendent acts in behalf of the allottee land owner and proceeds to advertise the permit and the advertisement so stipulates that any lands eligible at the time of advertisement or becoming eligible after the advertisement

(Testimony of Gordon Powers.)

during the five year period of the contract, may be added and become a part of that grazing permit, and it is with the consent of the Indian allottee, through this power of attorney, that power of attorney gives their consent to the superintendent to contract the land under a grazing permit. Now these lands on which the complaint alleges trespass are, or were, lands listed and contracted under a grazing permit under that system I just outlined.

Q. And the superintendent would be the one who would give permission or deny permission for anyone to have cattle on land other than where he had a [38] permit, lease or owned it?

A. Yes, that is true.

Q. Can you find any record of such consent or permission having been given to R. B. Fraser for any of the lands or alleged trespasses described in the complaint? A. No.

Q. Mr. Powers, referring to your affidavit which is attached to the motion for preliminary injunction on file herein, I will hand you that and ask you if that is your affidavit? A. Yes, it is.

Q. I might state, for the record, I am now proceeding to the evidence on count two with this witness. That is specifically with reference to the trespass, his other testimony heretofore having been for all counts as it may pertain. Referring to page three of your affidavit I will ask you to glance at that and see if that refreshes your memory as to what you did on February 12th and 13th, 1952?

A. It does.

(Testimony of Gordon Powers.)

Q. Would you state what you did on that day, whom you were with and what you did and saw?

A. On February 12th, I received a call from Mr. Joe Cormier, who advised me that there——

Q. Just a minute, you can't say what anyone else told you, you can say what you did and what happened [39] as a result of that call?

A. On February 12th I drove alone to what is known as Range Unit No. 22, which is under grazing permit to the Cormier brothers. Upon arrival at this Range Unit No. 22, I met Mr. Clem Cormier, and Mr. Almond Hall, who was on that date a state brand inspector. And we drove into the range unit itself, and we met Mr. Joe Cormier and a cowboy named Albert Newman, who, those two individuals were on horseback, and as we were talking as a group, a man who identified himself in answer to my question as Mr. Roy McGarry drove up. He was in a four-wheeled drive surplus military vehicle and Mr. McGarry in response to my questions advised me——

Mr. Jones: Just a minute, to which we object if he is going to testify as to what Mr. McGarry said, we will object to it on the grounds it is hearsay.

The Court: Will you confine just to what you did.

Q. Just a minute, Mr. Powers, I wonder if I could confer with Mr. Jones.

The Court: Well, it is about time for a recess.

(Testimony of Gordon Powers.)

(Whereupon a recess was here taken; court resumed pursuant to recess, parties present the same as before. Mr. Powers [40] resumed the witness stand for further direct examination by Mr. Galles as follows:)

Q. Mr. Powers, I think you had gotten down to the point where you saw Mr. McGarry, what did you do then?

A. Well, after we had, the group of us had discussed what our plans were, we drove over two or three allotments that were part of the grazing unit permit, two in favor of the Cormier brothers, and I had aerial photos, I identified the land which we were traveling over, and counted the livestock that I saw who were located on the stretch of land that I identified by the aerial photographs. I checked all of the brands on those I could get right close to and see readily, you understand this was in the winter time and the hair was quite long, but several of the cattle had been recently branded and some of the older cows had such large brands that they were very easy to identify as VC—let me refer—that is the right ribs.

Q. How many cattle did you find?

A. I counted a total of 84, there were 82 cows and 2 steers, the cows, there was no brand on any of the cows that I could identify other than VC brand on the right ribs, the two steers had a brand LB connected on their right ribs. [41]

Q. Now this VC and LB brands how were they

(Testimony of Gordon Powers.)

arranged, the letters? A. Well, the VC——

Q. Was that arranged the same as you have it on your affidavit on page 3?

A. Yes, and so is the LB, it is, if you would like me to try to identify how that is, how the brands are tied I will, but——

Q. No, I think that is sufficient, Mr. Powers, this was on February 13th, 1952? A. Yes.

Q. And on what lands did you find these cattle, can you step to Exhibit 1 and point out where you found the cattle?

A. Yes. I counted 49 cows on the north half of the southeast quarter of section 33, township 3 South, range 46 East.

Q. Is that marked on Exhibit 1?

A. Yes it is, in red.

Q. It is marked in red?

A. And I counted 33 cows and 2 steers on Lot 2 of section 4, township 4 South, range 26 East, that is also marked in red on this map.

Q. And I notice the date, written in ink between the two red areas you have identified as 2/13/52, does that stand for February 13th, 1952?

A. Yes, that is the date on which this action I have [42] described occurred.

Q. Do you have in your records which you brought with you a copy of a demand letter for payment that was sent to R. B. Fraser?

A. Yes, I do.

Q. Will you extract that, please.

A. This is the document.

(Testimony of Gordon Powers.)

Q. Is that part of your official files and records kept in the ordinary course of business of which you are the custodian? A. Yes, it is.

Q. I have identified the document marked Plaintiff's Exhibit No. 6 and ask you to state what it is please?

A. Well, this is a carbon copy of the letter sent by registered mail to R. B. Fraser, Billings Hudson Company, Billings, Montana, dated February 15th, 1952, typed for the signature of L. C. Lippert, superintendent.

Q. And I notice on the document it says, 'return receipt requested,' do you have such a return receipt?

A. No, that is not with these records, that was attached to records that had been referred or transmitted to the area office for the reference on through channels for their records, I don't have it attached to mine. [43]

Q. Attached to this exhibit is a receipt for registered article, what does that show?

A. That shows, that is a receipt issued by the post office for their acceptance for mailing purposes of this registered letter, it is——

Q. In the ordinary course of business, what would have happened to the original letter?

A. It would have been mailed to the addressee, Mr. R. B. Fraser.

Mr. Galles: The Government offers in evidence Plaintiff's Exhibit No. 6.

Mr. Jones: We have no objection to the Exhibit

(Testimony of Gordon Powers.)

for the sole purpose for what it is in for, demand.

The Court: I presume that is all it is offered for. The Exhibit will be received.

Q. Mr. Powers, do your records show that the money demand made in Exhibit 6 has been paid by Mr. Fraser or anyone on his behalf?

A. No, the records show no evidence of any kind of payment having been received by the office.

Q. Will you please refer to your affidavit attached to the motion for preliminary injunction at the bottom of page 4, I might state for the court that we are now proceeding to count three. I will ask you if on January 5th, 1955, you did anything with reference to cattle and counting cattle? [44]

A. Yes, I did.

Q. What did you do?

A. January 5th, 1955, I drove from the agency to what is known as Range Unit No. 19, which was permitted under the grazing unit permit to the Cormier brothers at that time, and I entered the range unit about 10 o'clock in the morning and counted; I observed twenty head of horses grazing on an allotment that I identified from aerial photographs again, as the northeast to the southeast quarter of section 27, township 1 south, range 27 east, and after having counted those twenty head of horses I proceeded on through the range unit No. 19, and observed a bunch of cattle grazing on what I identified from the aerial photograph as the north half of section 27, township 1 south, range 27 east.

Q. Did you say how many cattle?

(Testimony of Gordon Powers.)

A. No I didn't, just a bunch of cattle, so I drove on closer to this bunch of cattle, and as I was driving towards the cattle I observed a horseman, a cowboy riding a small sorrel horse with four white socks, and white blaze in his face, you might think that was funny but he was riding away from me and I saw the blaze on his face anyway, I had my binoculars with me and of course I tried to see, it was quite a ways away, so I tried to see if I could recognize the individual on the horse, which I could not, but as I was observing the horse riding away from me, [45] the cowboy stopped and as they were stopped, the horse swung his head around so I could see the blaze in his face on off out of that area, and as I continued then into the bunch of cattle, and they were quite gentle cattle, they were all good looking young heifer cattle, looked to me like they could be registered cattle, they were of that appearance and I couldn't find any brand anywhere and I had the binoculars of course in use and couldn't find any ear tag which, which sometimes you find on registered animals, and I couldn't identify or observe any horn marking or brand either, so I was not able to identify any markings on these young heifers, so I counted them, it was easy to drive right through all of them and I counted 42 head, all on this area I have already described. After I got through counting them, I drove over the rest of the area that was under permit to Cormier brothers, in this range unit 19, and I observed many bed grounds that had been recently used on this permitted land,

(Testimony of Gordon Powers.)

those bed grounds were very, very obvious, scattered throughout this local area. After I left this—well, after I got through counting the cattle, I went on through the range unit and went to the Pryor Creek blacktop highway, along Pryor Creek, and that was just downstream, down to the north of range unit 19, I proceeded on up the highway northward toward the town [46] of Pryor, and as I drove past the cow camp, that from to my knowledge has been used for many years by R. B. Fraser and his livestock operations, for a cow camp headquarters, I observed this same sorrel horse in the corral right off the highway, and a man, well there were two men in the yard, around this cow camp, I drove on by, to conduct some more livestock counting business, over on Sage Creek. And then I returned in the late afternoon, and returned through this same area and and went back to Crow Agency.

Q. Did you make a determination of the ownership of these 42 head?

A. Well, I attempted to, not having any brands to go by, but all I could—the best I could do was to consult the individual that I had seen on this sorrel horse, and all I know is what he told me.

Q. Does your record show that any demand was made for payment of these 42 cattle?

A. Yes, it does.

Q. Will you produce that?

A. I think I will just pull that—

Q. I have had the documents you handed me,

(Testimony of Gordon Powers.)

marked Plaintiff's Exhibit 7 and ask you if these are part of your official files and records kept in the ordinary course of business, of which you are the custodian? [47] A. Yes, they are.

Q. Will you state what those documents consist of?

A. These are two identical carbon copies of a letter sent by registered mail addressed to R. B. Fraser, 2015 First Avenue North, Billings, Montana, dated January 10th, 1955, typed for the signature of L. C. Lippert, superintendent of the Crow Indian Agency.

Q. How about the smaller papers attached?

A. On one of these carbon copies is a receipt for registered article, post office receipt, signifying receipt of this letter for mailing purposes, and to the other carbon copy is attached a return receipt, and this return receipt was signed January 12th, 1955, by Don W. Scott, as agent for the addressee.

Mr. Galles: The Government offers in evidence Plaintiff's Exhibit No. 7.

Mr. Jones: We will object to it on the grounds it is incompetent and irrelevant; I might say that insofar as the demand is concerned, I don't believe any demand is necessary, your Honor.

The Court: Objection overruled and the exhibit may be received.

Q. Does your record show whether the \$42.00 demanded in Exhibit 7 has been paid by the defendants or any of them or anyone on their behalf?

A. No, the records do not show any evidence of

(Testimony of Gordon Powers.)

any [48] payment of that \$42.00 ever having been paid.

Q. Referring now to page 7 of your affidavit attached to the motion for preliminary injunction, calling your attention to July 8th, 1955, did you observe any livestock in the course of your official duties on that day?

A. Yes, I did, I drove to Range Unit No. 19 on July 8th, 1955, and that range unit being under a grazing permit to the Cormier brothers, at about 7:30 or 7:45 that morning on July 8th, I entered the range unit and mounted a horse that had been left there at the fence line for me to use and rode on into the range unit, and as I was riding into the range unit I observed several riders to the southeast of me, about a mile or so, and I rode out to meet them and they were bringing a herd of horses towards me, and I joined them and I helped to hold this herd of horses in a fence corner, located on lot 5, section 21, township 1 south, range 27 east, and there were present Joe Cormier, Clem Cormier, Pat Cormier, and a cowboy introduced to me as George. These individuals held these horses in this fence corner while I attempted to identify the brands of these horses. With the help of these cowboys, I managed to identify twenty-one, well let me check this affidavit just a moment—eighteen horses and three mules, there were twenty-one animals altogether. These animals had [49] various brands that are as shown on this affidavit that I am referring to.

Q. I wonder if we might stipulate that the de-

(Testimony of Gordon Powers.)

scription of the horses or mules with the brands as appearing on the bottom portion of page 7 in the witness' affidavit might be incorporated into the record rather than having to read it all?

Mr. Jones: In other words, he will testify to that is what he saw?

Mr. Galles: Those are the animals he saw and the brands he observed, is that correct?

A. Yes, that is correct.

Mr. Jones: No objection.

The Court: It is the court's understanding that this will be incorporated into the record, the reference to the description on page 7, is it?

Mr. Galles: The bottom portion of page 7 described mules and horses and the brands found thereon.

The Court: That will be incorporated into the record as the testimony of this witness.

A. Do you wish me to continue with what I did that day?

Q. Yes. A. After we—— [50]

Q. Wait a minute, does that total three mules and eighteen horses, the description that we stipulated into the record? A. Yes, that is——

Q. I think that is sufficient, Mr. Powers, I think you have said when, where and identified the live-stock.

A. Well, I had to identify the land on which these horses had come.

Mr. Jones: We are going to object, your Honor, to any testimony in reference to where these animals

(Testimony of Gordon Powers.)

were picked up for the reason that in the affidavit, shows that this witness does not know where they were picked up, he was not present at the time, he only saw them when they were over here in this corner, I don't think he can testify to that, it is hearsay.

Mr. Galles: Well, let me see, I don't know——

Q. Do you know where these animals and horses were found before they were driven to the corner of the fence you have described? A. No, I don't.

Q. Somebody else told you?

A. Yes, I was shown the location, I know the land, identified the land on which the horses were when I first saw them. [51]

The Court: Well you have already described, that is lot 5.

A. No, your Honor, that was where we ended up with the horses, but——

Q. Well, lot 5 is where you drove them into the corner? A. And counted them, yes.

Q. That is not where they were found grazing and——

A. Lot 5 is not where I first saw them, and I don't know whether that is where anyone else saw them or not.

Q. Now, referring to the past page of your affidavit, page 8, did you observe some cattle in the course of your official duties on July 28th?

A. Yes.

Q. Do you have records with you showing that a demand was made for payment of livestock, addressed to R. B. Fraser, with reference to the July 8th count that you made? A. Yes, I do.

(Testimony of Gordon Powers.)

Q. I am trying to go too fast I guess.

A. I didn't point it out on the map, the location of those 42 head.

Q. I have had the document you handed me marked Plaintiff's Exhibit 8, and ask you if this is part of your official files and records kept in the ordinary course of business of which you are the custodian? [52] A. Yes.

Q. Will you state what it is please, what they are?

A. It is a carbon copy of the letter sent by registered mail addressed to R. B. Fraser, 2015 First Avenue North, Billings, Montana, dated July 14th, 1955, typed for the signature of L. C. Lippert, superintendent, and it also—this document is supported by a receipt for registered article from the Crow Agency post office, and that registered article was this letter, and also has a return receipt signed with date of delivery, July 15th, 1955, bearing the signature of Wayne Devons, it is difficult to read, but it looks like it is D-e-v-o-n-s, and that is the signature signed as an agent for the addressee.

Q. R. B. Fraser's name appears on this registered return receipt? A. Yes.

Q. However— A. Yes, it does.

Mr. Galles: The Government offers in evidence Plaintiff's Exhibit No. 8.

Mr. Jones: We will object to Plaintiff's Exhibit No. 8 on the grounds and for the reasons that no proper foundation has been laid, it is incompetent, irrelevant and immaterial.

(Testimony of Gordon Powers.)

The Court: Objection overruled, the Exhibit will be received. [53]

Q. Do your records show whether or not payment has been made pursuant to the demand contained in Exhibit No. 8, payment by R. B. Fraser or anyone else on his behalf?

A. The records don't show any payment ever having been received by the agency.

Q. Now referring to page 8 of your affidavit, did you make a count of livestock in the course of your official duties on July 28th, 1955?

A. Yes, I did.

Q. Will you describe what you did and saw?

A. Well, I entered this range unit number 19, which was under grazing permit to the Cormier brothers, on July 28th, around 11:00 a.m., and I went, I drove through the land under grazing permit and counted eight cows and three calves, all of which were branded VC on the right ribs. These eleven animals were located on the north half of section 27, township 1 south, range 27 east, and I identified that land by use of aerial photographs, and I continued on through the range unit and I again counted eighteen horses and three mules on the northeast quarter of section 22, township 1 south, range 27 east. These horses were quite wild and naturally I was in a jeep and I wasn't able to proceed—get anywhere near close enough to actually read any brands, but I had seen these individual horses and [54] mules on numerous occasions, and several of them I could positively tell as being the same animals that I had seen time after time, you

(Testimony of Gordon Powers.)

get to know these animals when you see them after quite a few times.

Q. Were these the same ones you saw on July 8th, 1955?

A. Yes, in my opinion they were identical to the same horses that I had actually counted the brands on, on January 5th, I would not say that they were all, I wouldn't be able to say that they were all the same animals, but there were numerous animals in this herd that certainly looked to me to be the same identical animals that had been in the herd that I had counted previous to this.

Q. I wonder if you would step to Exhibit No. 1 and point out to the court where you found the eight cows and three calves, branded VC, on July 28th, 1955?

A. They were on the land I have already described, but it is in red, it is the north half of section 27, township 1 south, range 27 east, colored in red on this map, with the date on there of 7/28/55.

Q. I notice some other dates, what is it, January 1, 19—January 5, 1955, now that refers to I think count three, and is that where you found the 42 cattle you testified to?

A. Yes, that is the same ownership of land, same [55] allotment and description.

Q. I wonder for the convenience of the court if you would mark with Roman numerals on Exhibit No. 1 not that you saw them there, but just mark the Exhibit for the assistance of the court where Mr. Landon and Mr. Buxton saw the sheep that they refer to; you heard their testimony?

(Testimony of Gordon Powers.)

A. Yes, I did.

Q. Will you mark a large Roman numeral one besides each of those places they testified too, please?

A. Is that adequate?

Q. Yes, and then with reference to count two, where you saw the 82 cows and 2 steers on February 13th, 1952, will you put a Roman numeral two at that point?

A. (Witness complying.)

Q. And likewise where you saw the 42 head of cattle in count three, on January 5th, 1955, will you place a Roman numeral three?

A. (Witness complying.)

Q. And what is marked on the Exhibit as July 8th, 1955, will you put a Roman numeral four, please?

A. (Witness complying.)

Q. And finally, where you saw 8 cows and 3 calves on July 28th, 1955, put a Roman numeral five.

A. (Witness complying.)

Q. Now, so the record may be straight, it is not where [56] the Roman numerals are, but it is the red marking on the Exhibit identified by Roman numerals adjacent thereto.

A. (No reply.)

(Whereupon the court then recessed for noon; court resumed pursuant to recess at 2:00 o'clock p.m., parties present the same as before.)

(Mr. Gordon Powers resumed the witness stand for further direct examination by Mr. Galles, as follows:)

Q. Mr. Powers, I will hand you Plaintiff's Exhibit No. 2 which has been received in evidence by

(Testimony of Gordon Powers.)

stipulation, and ask you if you prepared that document? A. Yes, I did.

Q. And will you explain what it portrays, please?

A. It portrays the unit boundary for range unit number 22, as of March 5th, 1952. It also indicates the range unit number 22 boundary that was in effect during the five-year permit period, December 1st, 1945, through November 30th of 1950.

Q. That is indicated by a different colored boundaries with the legend that will indicate what you have just said?

A. Yes, and within those boundaries as indicated, are also colors representing the different types of land use control, the green color, would you like me to identify the legend with what the map shows? [57]

Q. Well, does the legend reveal what you were about to say?

A. Yes, I have already stated that, that the colors represent the different types of land use control within these boundaries.

Q. Now you say that there are two five-year periods covered from '45 to '50? A. Yes.

Q. And '50 to '55?

A. Yes, those two five-year contract periods.

Q. Now you mentioned, some date in between, I think you said 1952?

A. That legend, this legend and the unit boundary, the legend on land use control was in effect at the time, on March 5th, 1952.

(Testimony of Gordon Powers.)

Q. How about the land generally within the boundaries indicated by the two five-year periods, was that disregarding the land use control, do those accurately describe the two units for the various five year periods indicated, if I make myself clear?

A. Those unit boundaries for the two different five-year periods enclose these various tracts of land, but the status of control did not remain the same for all of the duration of both of those five-year periods.

Q. I see; now this, you say, is range unit number 22? A. Yes. [58]

Q. When you say range unit number 22, what do you mean, is that parcel of land that is permitted to some particular person?

A. Yes, that is the number identity given to the land included in the grazing permit issued to the Cormier brothers. I should state that that is the identity of the unit number, that was permitted to the Cormier brothers for grazing purposes.

Q. I see, so that during the two five-year periods indicated on Exhibit No. 2, this range unit number 2, whether the former or latter five-year period, was during that ten permitted to the Cormier brothers?

A. Yes, under that number 22.

Q. Under number 22? A. Yes.

Q. Did R. B. Fraser have anything to do with range unit number 22? A. No.

Q. Now I will ask you, I will hand you Plaintiff's Exhibit No. 3 and ask you if you prepared that document?

(Testimony of Gordon Powers.)

A. No, I did not prepare this document.

Q. Are you familiar with it?

A. Yes, I am.

Q. What does it portray?

A. It portrays the land enclosed within the boundaries [59] of range unit number 19, and some portions of adjacent lands outside of the unit boundary of unit number 19.

Q. Who has range unit number 19 under permit?

A. At the present time it is permitted to the Cormier brothers.

Q. And who had it prior to that time?

A. Up to December 31st, 1954, and for two contract periods at least prior to that date, it was permitted to R. B. Fraser. Since December 1st, December 31st, 1954, I should say, since January 1st, 1955, it has been permitted to the Cormier brothers.

Q. Now you mentioned some land outside of the unit, what kind of land is that and who has control of it, if you know?

A. Those lands portrayed here outside of the range unit boundary are controlled either by fee patent or by competent lease or by office approved lease, and if I can identify the control, it is listed by the legend on those lands.

Q. The legend states who had the lease or the deed outside of the range unit? A. Yes.

Q. And in each case is it to the same person?

A. No, to various persons.

Q. I see, but the Exhibit explains who has the control [60] of those various ones? A. Yes.

(Testimony of Gordon Powers.)

Q. Now, Mr. Powers, proceeding to count six of the complaint I will ask you to refer to your affidavit attached to the motion for preliminary injunction and to the first page thereof?

A. I don't have that.

Q. I am sorry; did you in the course of your official duties on January 31st, 1952, make a live-stock count in connection with this case?

A. Yes, I did.

Q. Will you state what you did and what you found?

A. On January 31st, 1952, I drove to range unit number 22, arriving shortly after 8 o'clock in the morning, and upon my arrival I met Joe and Clem Cormier who were on horseback. I talked with them a few moments and proceeded in along to the unit by jeep and the Cormier's remained on horseback.

Q. Now which unit is that?

A. Range unit number 22.

Q. Permitted to whom?

A. Permitted to the Cormier brothers.

Q. All right.

A. I had aerial photographs and I identified land control so I would know what allotments I was on, and I counted 27 cattle branded VC on the right ribs, on the southwest quarter of section 33, [61] township 3 south, range 26 east. This affidavit lists range 27 east, but that is a typographical error, it should be range 26 east, and I further counted 28 cattle branded with a VC right ribs, and also a brand

(Testimony of Gordon Powers.)

identified as [2] on the right ribs, grazing on lots 2 and 3 in section 31, township 3 south, range 26 east.

Q. I wonder if you would step to Exhibit No. 1 and identify where you found those two sets of cattle?
A. (Witness complying.)

Q. Is that marked in red?

A. No, it is not.

Q. I wonder if you would take my pen and mark on Exhibit 1 where you found the 27 cattle branded VC on the right ribs.

The Court: What identification marks are you using there?

Q. Well, I will have him put it in there.

A. Shall I color that solidly or cross-hatch it or——

Q. Why don't you cross-hatch the land description that you have recited on which you found these cattle?
A. (Witness complying.)

Q. And then above it, will you write Roman numeral six and put the date on which you found these cattle?

A. Roman numeral number seven?

Q. Roman numeral number six.

A. (Inaudible.) [62]

Q. Would you indicate in the same manner where you found the 28 head of cattle branded VC or [2] on the right ribs?

A. I will have to consult my plat book now to see the location of those lots in that quarter section.

Q. Now you have marked out an area and cross-hatched it where you found the 28 head of cattle,

(Testimony of Gordon Powers.)

is that right? A. Yes.

Q. Now will you put also the Roman numeral six and the date on which you observed those cattle?

A. (Witness complying.)

Q. Now in searching your records did you determine who had the permit or other right of possession of the land you have marked on Exhibit 1 just now? A. Yes, I did.

Q. Who had that?

A. It was under grazing permit to the Cormier brothers.

Q. Was a similar registered letter sent to R. B. Fraser in connection with the cattle you have just described?

A. No, no there was no demand made.

Mr. Galles: And I might state the Government is not claiming any monetary recovery on that.

Q. Referring to page two of your affidavit, did you on February 4th, 1952, have an occasion to make a [63] livestock count in connection with this case?

A. Yes, I did.

Q. Will you describe what you did?

A. On February 4th, 1952, I again entered range unit number 22 under permit to the Cormier brothers, and identified the land on which I was located, and I counted 73 cows branded VC right ribs, or [2] on the right ribs, on the southwest quarter of section 33, township 3 south, range 26 east again, rather than 27 east as it says in this affidavit.

Q. That should be on 26 east?

A. Yes, it should.

(Testimony of Gordon Powers.)

Q. Did you see any other cattle at that time or place?

A. Yes, I did, I also counted 136 steers, I couldn't identify any brand on these steers, but they were—they all had their tails bobbed, the brush of their tail had been bobbed off, and——

Q. Will you step to Exhibit No. 1 and mark in with a cross-hatching, going the other direction, on the Exhibit, where you found the 73 head of cattle.

A. (Witness complying.)

Q. Now will you write in the date on which you observed these cattle and put the Roman numeral six beside it?

A. Roman numeral number seven.

Q. Number six, this is still count six.

A. (Witness complying.)

Q. Thank you. Did you bring with you at my request the [64] office copy in your office of what is attached to the complaint as Exhibit B with the various attachments?

A. Yes, I did.

Q. Will you produce that please, may I have it for marking?

A. (Witness taking document out of file.)

Q. Is this Plaintiff's Exhibit No. 9 which you have handed me and I have had marked, part of the official files and records of your office kept in the ordinary course of business and of which you are the custodian?

A. Yes.

Q. Will you state what it is please?

A. It is a copy of original grazing permit with its supporting modification, grazing stipulations,

(Testimony of Gordon Powers.)

land schedules, bond, performance of bond the pledge, and certificate of award that was issued in the name of R. B. Fraser, 106 Clark Avenue, Billings, Montana.

Q. Are there signatures affixed to the grazing permit? A. Yes, there are.

Q. Is there a signature that purports to be R. B. Fraser's affixed? A. Yes.

Q. And other original signatures?

A. Yes.

Q. Do you know where the original typewritten document is? [65]

A. I. I am certain that it would be in the general accounting office in Washington, because at that time we were sending all originals of our grazing contracts, permit contracts to the general accounting office for filing.

Q. Can you state that the exhibit you hold in your hand is an accurate, what you might call a duplicate original of what was the original typewritten grazing permit?

A. Yes, this is.

Q. Is this part of your official files and records as it exists? A. Yes.

Q. And no changes have been made in it since it was executed? A. No.

Q. That it is now in the same condition as it was when it was executed? A. That's correct.

Mr. Galles: Offer in evidence Plaintiff's Exhibit No. 9.

Mr. Jones: No objection.

(Testimony of Gordon Powers.)

The Court: Plaintiff's Exhibit 9 may be received.

Q. Now, Mr. Powers, I am going to hand this motion back to you with your affidavit affixed, and will you refer to page 4 of your affidavit please? [66]

A. (Witness complying.)

Q. Did you on November 4, 1954, make a livestock count in connection with Exhibit 9, and this case?

A. Yes, I did.

Q. Would you state what you did and found?

A. Well, on November 4th, 1954, in the company of Range Management Assistant, C. R. Pilgeram, I entered range unit number 19, that was permitted to Mr. R. B. Fraser at that time, and counted all of the livestock that I could conveniently locate from jeep travel, and I counted 196 cattle, 95 calves besides these 196 mature animals, and 17 horses, all grazing within the exterior boundaries of range unit number 19.

Q. Now, is that the same land that was permitted to Mr. Fraser under Exhibit 9 that you have just identified?

A. Yes, that is that small map, Exhibit 9, excuse me I would like to be——

Q. No, I was referring to this Exhibit?

A. The contract.

Q. The contract?

A. Yes, Yes, those are the lands that are covered by that grazing permit contract, that is where I found these cattle on lands——

Q. And is also described in Exhibit No. 3?

(Testimony of Gordon Powers.)

A. I would like to study this just for a moment to be sure of this legend, yes, it is also, this is the [67] land covered in the grazing permit contract itself.

Q. Which is Exhibit 9?

A. Which is Exhibit 9, on which I found, I counted these cattle on November 4th, cattle and horses, as I identified as being permitted to R. B. Fraser on that date, on this Exhibit No. 3.

Q. Did you identify this ewestock—you just referred to by brand?

A. Yes, the brands I observed were VC on the right ribs and circle Y, that is a Y enclosed within a circle on the left ribs, and circle H, which is an H enclosed within a circle on the left shoulder, and the horses were so wild I was not able to get close enough to determine any brands.

Q. Now, Mr. Powers, in Exhibit 9, does it provide for a certain number of livestock or animal units or whatever you want to call it, to be grazed in accordance with that contract?

A. Yes, it stipulates the maximum number of animal units or cattle as a class of livestock that can be grazed within, on the lands described in this Exhibit No. 9.

Q. Now will you refer to 9 and tell us how many cattle or other units were permitted at the time that you observed these heifer cattle on November 4th, 1954?

A. On November 4th, 1954, the grazing permit contract stipulates the maximum number of cattle

(Testimony of Gordon Powers.)

to be grazed, [68] is 41 cattle—no, let me restate that again, a total of 123 cattle, for year long grazing, that is twelve months' use in the year, and that 123 cattle is broken down to a stocking of 82 cattle for 12 months' year long use, on what we call the permitted land, that is non-competent owned, that the superintendent permits for the Indian owner under the power of attorney entitled 'Authority to Grant Grazing Privileges'. The balance of the 123 head or 41 cattle for year long use represents the maximum stock to be grazed upon what is termed as on and off grazing privileges, under the grazing permit. Now that on and off stocking is based upon the carrying capacity of the range land controlled by the permittee, independently of the Crow Indian office. In this case, it is comprised of competent lease land and fee patent deeded land, and the permittee grazes, the permittee voluntarily offers that for an on and off use, to be used in common and concurrently with the permitted land as one operation.

Q. Now it is alleged in the complaint that there was 196 head of cattle, is that—and that is what you testified to? A. Yes.

Q. And seventeen head of horses? A. Yes.

Q. In the complaint it does not say anything about the [69] 95 calves, do you count those in computing your carrying capacity?

A. No, we do not, anything under weaning age, we do not count against the stocking rates.

Q. Now, is there a difference between horses and cattle as far as the permitted carrying capacity of this particular land is concerned?

(Testimony of Gordon Powers.)

A. Yes, there is, the horses are computed at the rate of two horses equivalent to three cattle for animal unit determination.

Q. Is that by custom, or is it specified in the contract, or——

A. That is the administrative determination of equivalent ratio between cattle and horses for this Billings area within the Indian Service.

Q. That is universally accepted in the livestock business also, isn't it?

A. Yes, it is universally accepted by all of the permittees that do business with the Indian Service on the Crow Reservation.

Q. Just out of curiosity, do sheep convert to a different ratio?

A. Yes, they are converted at the rate of four sheep equivalent to one cow.

Q. Now, as a result of the contract and the number of cattle and horses you found on November 4th, 1954, on the permitted land described on Exhibit 9, can [70] you calculate the number of cow units that were in excess that the contract permitted?

A. Well, I have already calculated it. Would you like to have me calculate it again or just give you the figures?

Q. Explain how you did it and then your result?

A. Well, of course, the 196 cattle represent 196 animal units for stocking computation. The seventeen horses must be converted to cow units by the ratio of two horses to three cattle, that is of course

(Testimony of Gordon Powers.)

the same as one and a half horses equal one cow, so if we take a half of seventeen, which comes to eight and a half, and you can't split the animal, so you would have to go to, you would have to add eight and nine, let's see, that would be twenty-three, that would be sixteen, six, you would have to take nine more animal units to add to these seventeen horses to make that equivalent of one and a half horses to one cow, which would give you a total of twenty-six cow units then.

Q. Seventeen horses equal twenty-six cow units?

A. Twenty-six cow units, you add the twenty-six cow units to the 196 cattle, and I hope I get what I want.

The Court: I think you will have to make it eight instead of nine.

A. That is right, we dropped the half in this case, [71] we made it eight instead of nine, and you can't cut one of them in two, so we come up with a total of 221 cow units, exclusive of calves of course, they are not counted.

Q. Then in arriving at the 98 cow units alleged in the complaint, in excess of the number authorized and permitted, you deduct the 123 from the 221, coming up with 98? A. Yes, that is right.

Q. Now we have alleged in our complaint, that the sum of \$2,466.66 is due; how do we arrive at that?

A. Well, I have a document that has those figures on it, but we arrive at that by the penalty stipulated in our regulations for overstocking authorized permitted stocking.

(Testimony of Gordon Powers.)

Q. Is that a part of Exhibit 9 that you have identified and has been received, that is the regulations?

A. Yes, it is stipulated in that contract, grazing permit contract, do I have it here, yes I have it here, I would like a moment to refer to another one of my records here in this—

Q. Well, it is a mathematical computation, is it not, Mr. Powers? A. Yes, it is.

Q. And when you refer to the stipulations, I have in my hand Exhibit 9, you refer to what is the printed paper, entitled 'Range Control Stipulation'? [72] A. Yes.

Q. And particularly to paragraph 3, I believe?

A. Yes, that is the one.

Q. And will you explain just how that amount of money that is claimed to be due is figured?

A. It is paid on a one and a half times the regular rate per head that is charged under the face of the grazing permit for all livestock or animal units in excess of that which is stipulated by the grazing permit.

Q. In other words, you take 98 animal units, multiply it by one and a half times the rate per head agreed upon in Exhibit 9? A. Yes.

Q. For each animal in excess—and that is the multiplication process you go through?

A. Yes.

Q. Now, will you state what the rate per animal unit is in the contract as portrayed by Exhibit 9?

(Testimony of Gordon Powers.)

A. The rate per head stipulated was \$16.778 per head, per season, that is for the year long use.

Q. Now, that is in the original contract, did the modification that is attached and made a part of Exhibit 9 change that in any way?

A. No, it did not change the rate per head.

Q. That remains the same?

A. Yes, it does. [73]

Q. What did the modification do, incidentally, to the original contract?

A. It removed 40 acres of land from Mr. Fraser's grazing permit, because that 40 acre tract had been sold to a non-Indian, and a fee patent issued which removed, which converted it from restrictive status to a fee patent status.

Q. And by doing that, did it reduce the number of animals that he was authorized to have on the—
under the contract? A. Yes, it did.

Q. By how many? A. One animal unit.

Q. And it reduced it from what to what?

A. From 83 head to 82 head for year long grazing on the permitted land, and the total including the on and off carrying capacity, reduced from 124 to 123 cattle year long use.

Q. When you were testifying before, you did use the modified figures as reduced by the modification?

A. Yes, in these, in the maximum animal units that were authorized to graze, yes, because that modification was effective back in 1951, I believe, and these figures were computed as of 1954, and

(Testimony of Gordon Powers.)

that modification was still in effect at the date of November 4th, 1954.

Q. I wonder if for the record, Mr. Powers, if you [74] would just multiply out and summarize what you have said, that is 98 cow units which are the number in excess of that authorized and permitted, times the one and a half times the rate under the contract? A. Let's see.

Q. This is always an anxious moment to see if it comes out.

A. Well, I have a figure of \$2,466.36, is that fairly close?

Q. That is close enough, this says 66c, we will let your—would you read that amount again, please?

A. Two thousand four hundred and sixty-six dollars, thirty-six cents and six mills.

Q. Mr. Powers, was a demand made upon Mr. Fraser for that sum or similar sum?

A. Yes, I believe it was.

Q. Do you have any records of your office that show that?

A. Yes, I think I do, if I can look here a moment. I must be looking in the wrong one, here is a (inaudible)—yes, that it is.

Q. May I, is that, you have now found the document that makes a demand upon Mr. Fraser for that sum? A. Yes, I do have.

Q. May I have it so that it can be marked. I hand you what has been marked Plaintiff's Exhibit No. [75] 10 and ask you if this is part of your

(Testimony of Gordon Powers.)

official files and records kept in the regular course of business of which you are the custodian?

A. Yes, this is a copy of my official files.

Q. Will you state what it is please?

A. It is a carbon copy of a letter sent by registered mail addressed to Mr. R. B. Fraser, in care of R. B. Fraser, Incorporated, 2015 First Avenue North, Billings, Montana, dated November 26th, 1954, for the signature of J. M. Cooper, Area Director.

Q. Now, was that prepared in your office or did you receive this from some place else?

A. I received this as a copy from our Billings Area Office, it was not prepared in my office at Crow Agency.

Q. You mentioned this as having something to do with the cancellation of the permit, is that handled in your office, the cancellation?

A. No, that was not at that time, the approving officer at that time was the Area Director, the officer who approved the grazing permit, and therefore he was the one who cancelled the permit and this was in reference; this document also represents a notice of cancellation of permit.

Q. Prepared by a different office than the one you are in?

A. Prepared in the Area Office. [76]

Q. Who makes the demand, what office makes the demand for this \$2466, is that your office or the area office?

(Testimony of Gordon Powers.)

A. Well, in this particular case the area office made the demand.

Mr. Galles: I don't think I will offer this then, your Honor.

Mr. Jones: Could I look at that a minute?

(Whereupon a short recess was here taken; court resumed pursuant to recess, parties present the same as before.)

(Mr. Gordon Powers resumed the witness stand for further direct examination by Mr. Galles, as follows:)

Q. Mr. Powers, the record in this case showed that the complaint was filed on December 24th, 1955, have you had occasion to make any livestock counts since that date involving any of the defendants in this case? A. Yes, I have.

Q. Do you recall them independently or would it be necessary to refer to memorandum you have prepared?

A. I will have to refer to the record, there has been many cases, many dates and I would request permission to.

Q. Did you prepare the memorandum yourself? [77]

A. Yes, these memorandums of record, I did prepare.

Q. Do you have a summary of them that you prepared?

A. Yes, I did prepare a summary of them.

(Testimony of Gordon Powers.)

Q. I have had the summary that you prepared marked Exhibit 11, and I will ask when you prepared that and from what documents or records?

A. Well, I prepared the summary sometime in early June or late May of this year, 1957, I don't recall the exact date.

Q. And from, did you prepare them from other documents?

A. I prepared them from the documents of record, that report, the results of my field investigations.

Q. And the documents from which you made this summary were they prepared by you?

A. Yes, they were prepared by me.

Q. Now referring to that summary, will you state in chronological order, if possible, when you made a livestock count following the filing of the complaint in this action?

A. On March 21st, 1956, I made a field investigation of range unit No. 19 under permit to the Cormier brothers.

Q. What did you find?

A. On that date I counted fifty-nine cattle bearing brands [8] on the left hip, [4] on the left shoulder, VC on the right ribs, and [9] on the left ribs. I found those cattle grazing on two or over two [78] separate allotments under permit to the Cormier brothers, under range unit No. 19, they were allotments No. 1817, and allotment No. 1879.

Q. When was the next livestock count you made?

A. On March 29th, 1956, I made another field

(Testimony of Gordon Powers.)

trip investigation, and I counted at that time, that investigation was of range unit No. 19 under permit to the Cormier brothers, and at that time I counted seventeen head of cattle branded [8] on the left hip, and [4] on the left shoulder, grazing on allotment No. 1879, listed as a part of the grazing permit on unit No. 19.

Q. That is permitted to the Cormier brothers?

A. That is correct.

Q. When was the next livestock count you found?

A. On April 9th, 1956, I made a field investigation of range unit No. 19 under permit to the Cormier brothers, and counted 25 cattle, branded [8] on the left hip, and [9] on the left ribs, grazing on allotments No. 2739, 1803 and 2740, all three allotments being under the grazing permit to the Cormier brothers on unit 19.

Q. When was the next one you found, if any?

A. November 20th, 1956, I made an inspection of range unit 19 under permit to the Cormier brothers, and on that date I counted 33 cattle, with the brand [8] on the left hip, on allotments No. 1817 and [79] 1879, under the permit to the Cormier brothers on unit 19.

Q. Did you find any other livestock on subsequent dates?

A. Again on December 12th, 1956, I made another range inspection of range, let me see, this inspection on December 12th, 1956, was on range units No. 18 under permit to the Reservation

(Testimony of Gordon Powers.)

Ranchers and Farmers Co-operative Association, and unit 19 under permit to the Cormier brothers, and I found a total, counted a total of 21 cattle grazing in range unit No. 18, with [4] on the left shoulder, I have the summary if I may look long enough to find it, it will make this easier to identify, well, these 21 cattle in range unit No. 18 were on various allotments, under the grazing permit of unit 18, permitted to the Reservation Ranchers and Farmers Co-operative Association, and 63 cattle were found on various allotments on range unit No. 19, under permit to the Cormier brothers; these cattle on the two units carried these brands, [8] on the left hip, [4] on the left shoulder, VC on the right ribs, and that is it.

Q. Did you find any other cattle in connection with your duties and this case after that or on the same day?

A. On this same date, December 12th, 1956, I also [80] counted 37 cattle grazing on, over three separate allotments, on allotment No. 2096, under competent lease to the Cormier brothers; No. 2116, under office-approved lease to the Cormier brothers, and No. 2119, under competent lease to the Reservation Ranchers and Farmers Co-operative Association.

Q. Thereafter, did you make any livestock count in connection with this case?

A. On January 17th, 1957, I made another field inspection over range units No. 18, under permit to the Reservation Ranchers and Farmers Co-opera-

(Testimony of Gordon Powers.)

tive Association, and unit No. 22, under permit to the Cormier brothers, and I found on that date 33 cattle bearing—I will look at my—the [4] brand on the left hip and [8] on the left hip—no, that [4] is on the left shoulder, not on the left hip.

Q. That was which, that was the 33 head?

A. That is 33 head, yes.

Q. And you said you found 41 head on range unit 22, permitted to the Cormier brothers?

A. On January 17th, that same date, I found 41 head on range unit No. 22, permitted to the Cormier brothers, on two separate allotments.

Q. Were those cattle identified by brand?

A. Yes.

Q. By you?

A. I identified the [4] left shoulder brand, and the [81] [8] left hip brand.

Q. Did you observe any other cattle on that day or later in connection with this case?

A. Yes, on this date, same date, January 17th, 1957, I further counted on three different allotments 247 cattle, these cattle were distributed over allotment No. 2116, under office-approved lease to the Cormier brothers, allotment 2613, under competent lease to Orié Dodsall, and No. 2003, under competent lease to the Cormier brothers. These cattle bore brands VC right ribs, and [4] left shoulder, let's see, and that is all the brands.

Q. Did you find any cattle that subsequent date?

A. On March 27th, 1957, I observed the movement of a herd of cattle by various cowboys, and I

(Testimony of Gordon Powers.)

counted those cattle through a gate, and my tally came to 358 cattle, bearing the brand VC right ribs, and I observed the movements of this herd of cattle, let me make a correction, my count was 362 head, the 358-head tally was that of another individual, and I observed the movement of these cattle over eight separate individual allotments under various land-use control, allotment No. 3109 is under competent lease to the Cormier brothers, allotment 2004, under competent lease to R. B. Fraser.

Q. That is the same defendant here, he had a right to have his cattle there? [82]

A. That is correct, he had the competent lease on that tract of land.

Q. Very well.

A. Allotment No. 1832, under competent lease to O. W. Crawford; allotment No. 3267, under competent lease to Mrs. E. E. Hanson, and another portion of allotment No. 3267, under competent lease to O. W. Crawford, and allotment No. 2021, under office-approved lease to W. R. Crawford, and allotment No. 2609, under office-approved lease to Orié Dsdall, and allotment No. 2086, under office-approved lease to R. B. Fraser.

Q. Did you make a livestock count on any date subsequent to March 27th, 1957?

A. No, I have not.

Q. Mr. Powers, have you made any kind of demand, request or otherwise to R. B. Fraser, R. B. Fraser or any of the other defendants in this case, to remove their cattle from trespass?

(Testimony of Gordon Powers.)

A. Well, yes I have on these occasions, where we issued, that is my office out of Crow Agency, issued formal notice and demand for penalty and for removal, immediate removal of livestock, and then other occasions, in talking to agents of Mr. Fraser and in talking to Mr. Fraser himself, I have made requests for removal or reduction of livestock in numbers. [83]

Q. Have you been trained in range management and range control, Mr. Powers?

A. Yes, I have.

Q. What is your education on that?

A. I have a bachelor of science degree in forestry with range management major.

Q. And have you been performing that kind of work since your graduation from college?

A. Yes, entirely, with the exception of a little over three years in the air force.

Q. When and where did you graduate in forestry?

A. From the University of Montana at Missoula in 1942.

Q. Will you state under what conditions the grazing of grasses on the Crow Indian reservation damages the land?

A. Well, any time that there are more animal units grazed over a period of time, that is longer than that forage production will support in animal units, there will be damage to the residual forage itself.

(Testimony of Gordon Powers.)

Q. And in the case of an occasional grazing on the land, of course, the livestock eat some of the forage that is there, that is true?

A. That is correct.

Q. Is there an easy way or not to determine just what the amount of grass they have eaten or how much damage they have done to the land?

A. Oh, it is not easy at all. As a matter of fact it is [84] extremely difficult to determine permanent abuse to forage or permanent, by abuse; I mean continued over-grazing, in order to determine that positively it is necessary to conduct research experiments, taking into consideration the annual forage production in connection with the clay and the precipitation, and the trend to change of species of forage, there will be a decrease or increase of certain species, depending upon the trend. If the trend is one of deterioration, there will be a decrease of a desirable species, and an increase of the undesirable species, and an over-all reduction in total, total volume of production, and it is difficult to determine that permanent damage.

Q. In terms of dollars, for example?

A. In terms of dollars it is extremely difficult, because now you are dealing with market value, which is determined by business practices and competition and so forth.

Mr. Galles: You may examine.

(Testimony of Gordon Powers.)

Cross-Examination

By Mr. Jones:

Q. Mr. Powers, is it—I don't know whether you can tell me this or not, but I would like to know is it the Indian department's position that where other peoples' cattle are found on competent leases, that the Indian department has the duty there and [85] feels that they should bring these actions of trespass on competent leases?

Mr. Galles: To which we will object as no proper foundation laid, calling for the conclusion of this witness, and in the absence of that foundation I don't believe he is qualified to answer that question.

The Court: Objection sustained.

Q. Mr. Powers, do you know how long you have been in the forestry, in the forestry department of the Crow Agency itself?

A. I have been working under the superintendent of the Crow Indian Reservation since March 7th, 1947.

Q. And do you receive from time to time, bulletins from the Department of Interior and the Regional Office in reference to policy in your work?

Mr. Galles: Object to that as immaterial and irrelevant, it is a question of what under the law, rather than the policy or bulletins or internal administration, I think it is a question of law as applied to the evidence that is received in this case.

The Court: Objection sustained.

(Testimony of Gordon Powers.)

Q. Well, in reference to these competent leases, they are the Indian, the Indian doesn't have possession [86] of the property, do they?

A. Well, I don't know what you mean by possession; they have title of ownership in trust status, yes.

Q. Well, the Indian allottee, or trust owner, ordinarily when he gives a competent lease, say a competent grazing lease, he doesn't run his cattle on that piece of ground does he?

Mr. Galles: Objected to as calling for a conclusion of the witness and immaterial.

The Court: I will let him answer that; objection overruled.

A. In some cases they do, yes; they will lease their land and they will also stipulate that they reserve the right to graze a certain number, or maybe not a stipulated number, but just their cattle on that land along with the lessee's cattle.

Q. Now, in reference to these office leases of Cormiers, in reference to these trespasses on December 12th, 1956, where it says that an office lease to the Cormier brothers on lot 15, section 6, township 4 south, range 27 east, do you know who has possession of that land?

A. If I understand your question correctly, I will answer that I do not know who has physical possession, if anybody. I know that the land-use is authorized to the Cormier brothers under this [87] identified office-approved lease.

(Testimony of Gordon Powers.)

Q. And does that hold true as to competent leases as to use, is that correct?

A. I don't quite—I don't believe I understand your question.

Q. Well, in other words, you say the office lease is the use of the land under this office lease to the Cormier brothers?

A. That is the authorized use.

Q. Then, is also the authorized use of these competent leases to the Cormier brothers, too, where they have a competent lease?

A. That is correct; that is the legal authorized use.

Q. And is that also true in reference to these permitted units, such as unit 19?

A. Yes; all of the lands, the individual allotments that are listed as part of these grazing permits, carry with it the authorized use of those tracts of land for grazing purposes only, and not to exceed these designated stocking limits.

Q. Then, in other words, insofar as the use of this land goes, between a permit, or either a competent lease or a non-competent lease, will you say that that question of difference is how it will be used, is that right?

A. Well, I will answer you this way and see if this is the answer you would like: I would like to say [88] there is a distinct difference between the privileges authorized under a grazing permit and those authorized under a lease. The grazing permit is a revocable contract, and it is for grazing pur-

(Testimony of Gordon Powers.)

poses only. A lease may be a grazing lease, but it carries with it the residual leasehold rights that are greatly in excess of for grazing use only. They may be; there is a considerable difference in actual possessed use between those two types of contracts.

Q. But it is a possessed use, is that correct?

A. It is an authorized, possessed use in each case; one is quite limited; the other is very broad; that doesn't have those rigid limitations, that is, I am speaking of leases now, it doesn't have these rigid limitations that revocable grazing permit does.

Q. Now, in reference to these, for instance, this trespass cited March 27th, 1957, through these competent leases, what was being done with these cattle at the time, do you know?

A. So far as I could observe and in discussing the movement with the cowboys present, I concluded that they were being moved from one area in which they had been grazed for part or most of the winter to another area that they were to be grazed on from there for an unknown period at the time.

Q. Did you have the conversation with the cowboy in [89] charge of these cattle at the time?

A. Well, I don't know who the cowboy in charge was, but I discussed—I had a discussion with Mr. Park Taylor and Mr. Dan Fraser.

Q. Did you give them permission to go through that gate at the time?

A. I didn't give permission. I was asked if there was any definite place that the cattle should be taken or should not be taken, and my answer to that

(Testimony of Gordon Powers.)

question was that I was not there to indicate any place they should or should not go; that I was not there to place a trap in which they might be led whereupon I could make a demand. I advised the two individuals, Mr. Taylor and Mr. Dan Fraser that I was there merely to observe the movements and to record or observe for future recording what occurred.

Q. Now, in reference to these violations, say on March 21st, 1956, did you get a call from the Cormiers in reference to these violations at that time?

A. I think I did, if you will permit me to——

Mr. Galles: I will object to that as being immaterial unless you have some purpose in——

Mr. Jones: Well, your Honor, I don't know how material some of this testimony is going to be, it is preliminary. [90]

The Court: Objection overruled.

A. Yes, as I recall I did get, I don't have it on this record, if I looked in my files long enough I think I would have, would find my memorandum, but as I recall, I did get a telephone call from one of the Cormier brothers inviting my attention to some cattle grazing within this range unit No. 19.

Q. And was that on the 21st day of March, 1956, that call or had you been called earlier?

A. I don't recall whether it was on that day or the day previous, I will look a moment here and see if my memorandum recorded in this reveals any of that, it is possible, I think I will have to look at my diary, if I may, because I don't seem to have any-

(Testimony of Gordon Powers.)

thing right here, I don't know if I am going to find it or not.

The Court: Could you go on, Mr. Jones, and come back to that at the next recess?

Q. All right. I believe you stated, Mr. Power, that on February 12th, 1952, that you received a phone call from Mr. Joe Cormier in reference to some livestock on land in unit 22 at that date?

A. I don't recall whether I made that statement, but I did receive a telephone call or a complaint from Mr. Joe Cormier on the 12th day of February, 1952.

Q. In other words, did you talk to Mr. Cormier yourself [91] in reference to this complaint?

A. Yes, I did.

Q. At the time you observed these cattle in this unit 22 what would you describe where these cattle were, were they bunched up or spread out or how?

A. They were pretty well scattered, as a matter of fact, I would judge they were probably, oh, several hundred head of cattle in this area, and they were in, they were fairly well scattered, and the ones that I have already described on this date, as having been located there, and they were in groups of a few head to several head, and over all the whole area, not just limited to this described land, there were, I would judge, to be between 100 and possibly 300 head of cattle, it is, I made no attempt to actually determine total numbers of cattle.

Q. Were some of these cattle in this overall area Mr. Cormier, the Cormier brothers cattle?

(Testimony of Gordon Powers.)

A. On this date, no. I found no other cattle, other than those with the VC and the [2] brands, in this whole general area, that was on the date of your referring, counsel, you are referring to this date of February 13th?

Q. Yes.

A. Yes, that is the date my answer goes to.

Q. Well, in this area, you speak of this, the exterior [92] boundaries of unit No. 22, is that unit fenced, the interior boundaries, is there a fence on that?

A. There are fences over most of the boundary, but not all of them are on line and there are numerous interior fences as well.

Q. Well, is there, so the Court will know, do other people have lands within the exterior boundaries of these designated units, other than the permittee?

A. You mean land-use or land ownership?

Q. Well, either land-use or land ownership?

A. Oh, yes, yes there are of course a great many individual tracts of individually-owned land in this boundary, and some of those tracts are now in fee patent status, the Indian ownership has been extinguished, and there are competent leases held by others than the permittee, does that answer your question?

Q. Yes, and are these lands within this unit—I take it that you are familiar with this whole area, you have been over it many times, is that correct?

A. Well, I wouldn't say the whole area, no, but the area in which I have had occasion to specifically

(Testimony of Gordon Powers.)

direct my attention, for some reason such as this, as such as has been revealed in the records here, I am quite familiar with those portions of the area.

Q. Well, now, there is nothing, there is no fences [93] in most instances upon this area, is there, to prevent a cow from wandering from a part of unit 22, say, to off on to a piece of ground that is leased to somebody other than the permittee under that unit, is there?

A. No, there are no fences, there are not fences in all cases that would totally prevent movement of livestock from one tract of land to another tract of land, within the exterior boundaries of range unit 22; however, in some cases there are, you see it is necessary to understand that the original range unit as fenced and as bounded by the exhibit, I don't recall the number, that—Exhibit No. 2, has changed considerably since over the years those are actually into the third contract period now, since this exhibit shows the boundary that that exhibit shows, and of course, the fences have not all been moved as the ownership or use control changed during those two and a third contract periods.

Q. Now, in reference to this unit No. 19, upon the termination of Mr. Fraser's permit, who became the permittee for grazing purposes?

A. The contract was awarded to the Cormier brothers, after the cancellation of the permit held by Mr. Fraser.

Q. And was that permit bid?

A. It was first, if you would like me to trace the

(Testimony of Gordon Powers.)

manner [94] in which the Cormiers acquired this permit, is that what you want?

Q. Yes, I would like to know.

Mr. Galles: I will object as being incompetent.

The Court: Overruled.

A. The land within the range unit 19 was advertised for bid, and as I recall, one bidder, I believe, was all there was, the contract was offered to this bidder, but he did not complete his contract under our advertisement requirements, and then the contract was negotiated according to regulation, prior to the twelve months after the advertisement was issued, to the Cormier brothers, at the same rate that it was advertised at.

Q. You mean that is per head unit?

A. Yes.

Q. Do you know what their rate was?

A. Yes, I can find out immediately, at \$10.05 per head, that is \$10.05 per head per season, and of course it is important to know that this season in this case was a six months season, yes, from June 1st to November 30th, rather than year-long, that had been the previous season.

Q. Now, in reference to these seventeen head of horses that you referred to, I believe you stated you were unable to identify these horses, is that [95] right?

A. On what date?

Q. Well, these seventeen head of horses that you refer to on page 4, on November 4th, 1954?

(Testimony of Gordon Powers.)

A. Yes, that is correct, I was not able to identify brands.

Q. And these horses, but you still charged Mr. Fraser with the penalty for these horses being in there, although you don't know, couldn't identify the horses, is that correct?

A. Yes, that is correct, and the reason being that the permittee is responsible for not exceeding, not allowing the animal units to exceed the number that he is authorized to have within the confines of his grazing permit, at the stipulated or during the stipulated season, he is responsible for the numbers of livestock no matter who they may be owned by or where they come from, he is liable to maintain stocking, no greater than the maximum number authorized.

Q. In other words, the Government, or the Bureau, on behalf of the Indian, looks to the permittee, is that correct, on these things?

A. No, that is not correct, I didn't say that.

Q. Well, I can't quite get this, Mr. Powers, is this, what I am getting at, is that Mr. Fraser is charged with this overstocking of seventeen head, which you have admitted here that you don't understand, you don't know, or unable to identify them, you don't know [96] whose horses they were in other words, whether they were his or somebody else's, or for that matter the Cormiers?

A. Well, no, I had good reason to presume that they were Mr. Fraser's horses, because in my conversations with Mr. Fraser and with his agents, in

(Testimony of Gordon Powers.)

times past, they had mentioned to me that they used that range for grazing of horses on occasions, as a matter of fact that Mr. Fraser bought and sold horses, and held them in this range unit, and that he dealt in horses and grazed horses in this range unit area, and further at one time I offered or proposed to Mr. Fraser that he modify his grazing permit to include horses as a class of livestock, as well as cattle, as a class of livestock, under his permit so that he would then in no way be violating his permit, which actually was limited to cattle as a class of livestock, so it was not uncommon for me to observe horses grazing in range unit 19, and it was definitely understood between Mr. Fraser and myself that there were horses of his grazing in there from time to time, and that there was nothing in particular wrong with it except as I had called to his attention, I would much prefer if he would actually get his contract to list those horses as a class of livestock so that there would be no actual violation of his grazing permit in his grazing of horses in that unit. [97]

Q. But I believe you stated that it was the permittee who is responsible for any livestock within the unit, is that correct?

A. No, I didn't state that, what I stated was——

Q. Let's just check the record please, will you go back?

(Whereupon, a short recess was here taken; court resumed pursuant to recess, parties present the same as before.)

(Testimony of Gordon Powers.)

(Mr. Gordon Powers resumed the witness stand for further cross-examination by Mr. Jones, as follows:)

Q. Mr. Powers, who gives notice to these, to the lessees on the reservation, do you know who gives notice to the lessees on the reservation in reference to the regulations, the Indian regulations, in reference to leasing and using of these units; does that notice go out through your office or through you, is it given there, the records that are under your care?

A. No, I don't, I don't have any administrative responsibility for the leasing policy or regulations.

Q. Isn't it true, Mr. Powers, that pretty near all of these charges of trespass by Mr. Fraser have been brought by notification to you of such trespasses by the Cormier brothers?

A. No, some of them have, but not pretty near all of them.

Q. How have they notified you, is it always by telephone, [98] by letter or otherwise?

A. Oh, it is by telephone and by personal visit to the office, both, on those occasions when they did notify me.

Q. They haven't communicated with you by other means have they, for instance by radio?

A. No, no, I don't recall by radio, of course we don't have, we don't maintain any radio communications with that end of the reservation, just within our Government communication system entirely.

Q. I believe you stated that originally, under

(Testimony of Gordon Powers.)

these grazing units, that the Government, that these units were fenced like unit 22, originally was fenced, and then it belonged to one party?

A. The units were not all fenced entirely, and they were not all fenced right on the line, there are many fences between adjacent units, that do not follow the identified grazing permit land control, because of the terrain and irregular lines, there will be a straight fence cutting across an irregular line and gives and take on both sides of trade of land, so it is more convenient to keep up the fence than maintain a straight fence.

Q. When you say this, this has kind of been down through the history of a give and take proposition is that right?

A. No, I said that some of these unit [99] boundaries, boundaries between adjacent units, have a straight fence, passing through an irregular boundary line, that will result in that case, a give and take proposition to promote easier fence maintenance, and more logical fence location.

Q. Well, did you have any conversation, or did you at one time attempt to get the Cormiers and Frasers to straighten out their units, back in about 1950 or 1952?

A. Yes, I devoted considerable time to that.

Q. What was the outcome on that?

Mr. Galles: I will object to that as immaterial, incompetent, it seems we are getting outside the issues of this case, your Honor.

(Testimony of Gordon Powers.)

(Argument to court by counsel.)

The Court: Well, I will let him answer this question, I don't think we should go into this any great length.

Mr. Jones: I don't intend to, your Honor.

The Court: Very well, objection overruled.

A. Could I hear that question again?

Mr. Jones: Would you repeat the question?

(Whereupon, the last question asked [100] was repeated by the court reporter, which question is in words and figures as follows: "Q. What was the outcome on that?")

A. No success.

Q. Was Mr. Fraser agreeable to fence his share of the land off, and block it off?

A. I don't know because I couldn't get a common meeting where Mr. Fraser could make such proposal to the Cormiers.

Q. Well, didn't the Cormiers absolutely refuse to it?

A. No, not that I know of, I would have to answer negatively to that question.

Q. Now, in reference to your testimony pertaining to trespass on unit 22, January 31st, 1952, I believe you identified these units as the southwest, and allotment 2505, Lion That Walks, southwest quarter of section 33, township 3 south of range 26 east, and that you found 27 head of cattle in there at the time,

(Testimony of Gordon Powers.)

were these cattle scattered out or where, just where were they located?

A. That was on January 31st?

Q. Yes, that is on page 1.

A. I want to be certain of that date, because it is 28 cattle that I counted.

Q. Well now——

A. That day on that tract of land. ,

Q. Well, there is 27 cattle on the one? [101]

A. Oh, excuse me.

Q. And 28 on the other, but I am referring to the first one?

A. Yes, 27, they were dispersed as cattle normally grazing would be, they were all on one acre area of that 160 acre tract, no.

Q. Could you tell whether they had been grazing there quite awhile or what?

A. No, it wouldn't be possible, that was in the winter time, and as a matter of fact there was lots of scattered snow cover, and the range of course had the appearance of old, dry, winter range and it was frozen, the ground was frozen and I don't know how long they had been there.

Q. I hand you Plaintiff's Exhibit No. 2 here, and for your reference now, isn't it true that Mr. Fraser had either owned or leased land in a close proximity of where his cattle were found and trespassed?

A. Yes.

Q. And that there is no fence between where these cattle were found on Mr. Fraser's land, is that correct?

A. That is correct.

(Testimony of Gordon Powers.)

Q. And these cattle could pass back and forth on either, on any of this ground, isn't that true?

A. Will you state that again?

Q. These cattle could pass back and forth on any of this ground? [102]

A. Yes, there was no fence control to prevent them.

Q. While you have been forester at Crow Agency, Mr. Powers, have you ever notified Mr. Fraser that he had to fence his cattle off these units 19 and 22?

A. I don't believe I have.

Q. Is there anything in your records that, or the records if you know, or the records at Crow Indian Agency, that Fraser has been so notified to fence?

A. Yes, there is one document that I remember, I recall seeing today I think, I saw it again here today, in this file, yes, there is here a letter dated January 20th, 1954, to Mr. R. B. Fraser, Billings Hudson Company, Billings, Montana, signed, typed for the signature of Robert Yellowtail, that states in the penalty matter paragraph, "We must insist, however, that all further use of these competent lands in range units be controlled by fencing these areas and the livestock confined within these fences."

Q. That is the only notice that you know has ever been given to him, is that correct?

A. I believe that is the only one I have seen.

Q. Do you know whether this notice has been given to all other lessees and permittees on the reservation?

A. I have no knowledge of that.

Q. I hand you Plaintiff's Exhibit 9 and refer to

(Testimony of Gordon Powers.)

paragraph 3 of the range control stipulations, and ask you if you know how long that stipulation has been [103] in effect on these permits since, on these contracts?

A. It has been in effect all of the time that I have worked for the Indian Service, since March of 1947.

Q. Do you know whether or not these, I will ask you if from reading that instrument if you can determine what date these stipulations went into effect?

A. It was these range control stipulations on this printed form were approved May 29th, 1931, by C. J. Rhoads, Commissioner of Indian Affairs.

Q. Mr. Powers, in reference to overgrazing, will you state that the, if the damage to the owner were where land is overgrazed, that that damage, the amount of that damage would have a direct bearing as to the amount of revenue he could make, get in the future from leasing that grass or using that grass himself, is that about how you would put it?

A. Yes it does, if it continues.

Q. In other words, the damage is his loss of revenue, either by being able to use the piece of ground himself or by leasing it, isn't that correct?

A. Yes, that is correct, the damage is accumulative, it doesn't occur overnight as a rule.

Q. Well, do you know whether or not, Mr. Powers, that the value of grass on the reservation has increased or declined in the past few years?

A. Well, the average on the reservation has in-

(Testimony of Gordon Powers.)

creased slightly during the time I have been, about ten years [104] a little over ten years that I have been here.

Q. Going to your testimony in reference to the overstocking of unit 19 in November, do you recall were these cattle spread all over that unit or whereabouts on the unit were they, do you know?

A. Oh, they were congregated mostly on the south end of the range unit No. 19, that was the area supporting most of the water.

Q. Was there anybody there besides yourself and Mr. Pilgeram at the time you made this count?

A. No, there were only Mr. Pilgeram and myself.

Q. And were these cattle located on deeded land of Mr. Fraser's at the time, or in the unit?

A. There could easily have been some of these numbers on Mr. Fraser's deeded land, he had deeded land listed with his on and off, which allowed the certain authorized carrying capacity or stocking rate.

Q. Do you know whether these cattle had been on there prior to November 4th, 1954, in excess number?

A. Yes, there had been varying degrees of excess cattle over a period of several months.

Q. Have you observed them there?

A. One individual on my range staff made such an inspection and report, which resulted in a notice to Mr. Fraser.

Q. Was that, that was in May of 1954, isn't that correct, May 25th? [105]

(Testimony of Gordon Powers.)

A. I believe, I believe it was.

Q. That was the only other time, is that right?

A. Well, back in 1949 I believe, I had to make a demand on Mr. Fraser to reduce his excess numbers in this same range unit.

Q. But that was the only other time in 1954, is that correct?

A. I am not sure, I believe that is—I believe that is correct, but I am not certain; in August 27th, 1951, Mr. Pilgeram wrote a memorandum to me reporting that he had counted a total of 353 animal units, grazing under this grazing 19 permit, which authorized only 124 head, and a letter was written to Mr. Fraser dated August 31st, 1951, pointing that out to him, requesting that he reduce his numbers and advising him that if he did not reduce his numbers, he would be subject to this one and one-half times the regular rate per head as a penalty, and there were also horses in the unit at that time, 113 as a matter of fact, and at that time I advised Mr. Fraser that if he desired to graze horses in lieu of cattle, in part or in whole, why it would be necessary to modify his contract to provide for that, and please advise this office without delay the plan of operation you intend to follow, and on November 13th of 1952, I had a memorandum from Mr. Stanton, range conservationist, to me, reporting that he and Mr. Pilgeram [106] had counted a total of 180 cow units, when the permit called for 123 cow units, and at that time there were again 23 horses counted, when the permit authorized no horses.

(Testimony of Gordon Powers.)

Q. What date was that?

A. That was November 13th, 1952, and on November 18th, 1952, a letter was sent to Mr. Fraser advising him of this overstocking, and again warning him that if it continued there would be, it would be necessary to invoke this one and one-half times the regular rate per head penalty; and on May, yes on May 24th again, that date that you mentioned of 1954, Mr. Stanton's memorandum reports an overstocking, a total of 230 cow units, when the permit authorized 123 cow units, and does that bring us up to the date you were after or shall I continue?

Q. Then, between May, 1954 and November, 1954, you did not make any further count, is that correct?

A. On July 26th, 1954, Mr. Pilgeram, in a memorandum to me, reported a count on range unit 19 in which he counted 183 head of cattle, and three horses, when the permit authorized only 123 cattle, and on July 28th, 1954, a letter was written to Mr. Fraser advising him of that, and just a day or so before this, I had talked to an agent of Mr. Fraser's advising him of this situation, and his agent, Mr. Fraser's agent, assured me they had planned to remove some [107] of those cattle, and that they hadn't any knowledge of any excess stocking, so in this letter of July 28th, 1954, it was mentioned to Mr. Fraser that Mr. Lippert, Superintendent, signed this letter, and it was written that Mr. Powers suggested the possibility that some cattle might have been moved into unit 19 from north of the Highway

(Testimony of Gordon Powers.)

87, without Mr. Fraser's knowledge and it was requested that Mr. Fraser have a count made in an attempt to determine where the excess cattle did come from, and then on November 3rd, 1954, Mr. Pilgeram again in a memorandum written to me, reporting a count made by him on November 2nd, 1954, the count of 172 cattle and 17 horses, when the—that amounts to a total of 197 cow units, when the permit authorized 123 cow units.

Mr. Galles: What was the date of that, Mr. Powers?

A. The inspection was made on November 2nd, the memorandum reporting it was written November 3rd of 1954.

Q. Well, is this the same inspection you are referring to at page 4 that you have heretofore testified to? A. What is the date on that other one?

Q. November 4th, 1954?

A. No, this is not the same, Mr. Pilgeram made this November 2nd inspection independently, or I should say alone, not in my presence.

Q. And in other words, these were probably the same [108] cattle that you saw on November 4th, is that right? A. Very likely.

Q. Could be that these were the same cattle that you saw that were seen on May 24th of 1954, too?

A. Could be, I wouldn't know.

Q. Now, in reference to this unit 19, to go back, it is true isn't it, Mr. Powers, that included in this unit is competent leases and deeded land on and off—on an on and off basis, is that correct?

(Testimony of Gordon Powers.)

A. On range unit 19?

Q. Yes.

A. Yes, there are those lands located within that unit boundary.

Q. And that is true of this unit 19 when Mr. Fraser had it, isn't that correct?

A. That was true when Mr. Fraser had the permit.

Q. And on this unit 19, do you know where the water holes are, or whether that was on deeded or leased land or just permittee land in 1954?

A. In 1954?

Q. Yes.

A. May I consult that map of Exhibit No. 2, I believe it is, I think——

Mr. Galles: That is No. 22?

A. Yes, this is the one, the one large source of water comprised of a stock water reservoir in 1954, on December; any particular date in 1954 you [109] are interested in—anyway, in 1954, it was located on permitted land that Mr. Fraser had under his permit, until December 1st of 1954, at which time a competent lease was negotiated by Mr. Fraser on that tract of land, that became effective December 1st of 1954, and then Mr. Fraser held that water, controlled that water through his competent lease, and since that time, it has been that same tract that on which this reservoir is located, has been bought by Mr. Fraser and he was issued a patent in fee on that tract. Another tract on which a well is located, is now and has been for—I wonder if I can tell just

(Testimony of Gordon Powers.)

how long—at least it is now located and was in 1954, on land owned by Mr. Fraser by fee patent and a small reservoir located in 1954, or during the time Mr. Fraser had the permit, it was located on permitted land and at the present time and during the period since, Mr. Fraser has not held the permit and the Cormier brothers have held it. It has continued to be—it has continued in that noncompetent, permitted status, and those are the three major sources of water.

Q. Would you tell me what the description of that, where that last is?

A. It is on, excuse me, I will look at the plat book, it is located in the northeast of the northeast quarter of section 22, township 1 south, range [110] 27 east, on allotment No. 2739, owned by Pearl Elizabeth Costa.

Q. You say, do you know whether that reservoir is ordinarily, carries much water, how big a reservoir is it?

A. Well relatively, it is quite small and it does not hold water during the real dry periods.

Q. And other than that, this range unit 19 has no water on it, is that correct?

A. No permanent water, no flowing water.

Q. Do you recall what the condition of the permitted allotments, and by permitted I mean to differentiate between competent and incompetent or deeded land, permitted allotments on unit 19, at the end of 1954?

A. Yes, the south end of the range unit where

(Testimony of Gordon Powers.)

this large reservoir was located, or is located, and at that time, it being permitted land, was quite severely used naturally due to the congregation of cattle around the water, and there was quite a large area surrounding that water that had taken quite a lot of abuse.

Q. How many cattle, how many cattle does unit 19, that is in reference to permitted, not in reference to on and off, but in reference to the permitted units, how many cattle are allowed, and were allowed on unit 19 subsequent to 1954, or do you know?

A. Yes, the contract that Mr. Fraser held, stipulated [111] 82 head.

Q. No, I am talking to subsequent, when Mr. Fraser's—

A. Oh, after he lost, I see, after he lost the permit, I will have to look at the contract—83 head, the same as it was previously when Mr. Fraser held the permit, for a six months season, which is half as long as it was when Mr. Fraser held it.

Q. In other words, in reference to these permits, that is based on the condition of the range, is that correct, and amount of land involved in that unit?

A. Yes, when these permits are advertised and then contracted as a result of the bids, the stocking limits are based on the best estimate that we can make on the anticipated forage, average forage production over this whole five-year period, that will insure against overstocking or overgrazing in the event of unusually dry or unproductive years.

(Testimony of Gordon Powers.)

Mr. Jones: That is all.

Redirect Examination

By Mr. Galles:

Q. Mr. Powers, I believe you stated in your testimony under cross-examination, that it was the responsibility of the permittee for the excess stock, no matter whose they were, or words to that effect, is that about what you said?

A. I think that is about what I said, yes.

Q. What is the requirements of your office in the event there is an overstocking by livestock [112] that does not belong to the permittee, what happens?

A. Well, it is the responsibility of the office, my office, to investigate and determine ownership or control responsibility for control of the numbers in excess where they are not accepted as being the responsibility of the permittee.

Q. How do you get that information?

A. Well, normally we do it in several ways. We may either make a range count independently in our normal range use, check and discover excess stock, and then we will attempt to determine what the control is, and naturally we will first go to the permittee to determine whether he has, whether he accepts responsibility for this excess livestock, or whether he can indicate to us to whom they might belong; another way, we will have it reported to us by the permittee, when there are cattle that he does not assume responsibility for, grazing in his area, in excess, which brings the total stock in excess of his

(Testimony of Gordon Powers.)

authorized stocking, and he will then, he will notify us and ask us to take trespass action against the individual who does, who is responsible for them.

Q. In that type of case, where the Cormiers were reporting to you of certain excess stock on their permitted lands?

A. That is correct, and if the permittee does not [113] indicate to us that he assumes no responsibility, if he does not indicate to us that he does not assume responsibility for those excess numbers, then we go to him, as the permittee, as the assumed responsible controller of those livestock; in other words, if they are not his, he normally lets us know right quick they are not his, and he wants us to do something about it and——

Q. With reference to these letters that were written to Mr. Fraser, advising him of overstocking, do you recall or have any record of any response that was made by Mr. Fraser, calling at your office or letter, or other communication?

A. I don't believe I ever received any letters, I did receive a response from Mr. Fraser's agent to the effect that they would reduce their number of stock and ask for an extension of time.

Q. Who was that?

A. Mr. Clark McGarry, and he asked for an extension of time due to circumstances beyond their control, in which to reduce them, and it was given to them.

Q. Was that the only time you received any re-

(Testimony of Gordon Powers.)

sponse from all these letters or were there other times?

A. There were other times when Mr. Fraser responded by actually reducing those numbers, too, in 1949 and '51, I recall, when we made demands on reduction, for a reduction on Mr. Fraser, the next time we [114] went out to make a count, they had been reduced.

Q. Had the overstocking been reduced during the year 1954 as a result of any of your letters?

A. Not to our knowledge, because every time we made a count, we still found greatly in excess of stocking, and we received no response from Mr. Fraser to those demands for reduction.

Mr. Galles: I believe that is all.

Recross-Examination

By Mr. Jones:

Q. I would like to ask, I believe you stated, Mr. Powers, that you investigated the permittee reported these trespasses, and then you investigated to see who was responsible for these cattle, and then took action, is that right?

A. Yes, that is when it is overstocking or grazing of cattle, that are identified either by us or others, that are not properly authorized livestock to graze on that land, we must notify, take whatever action we can take under the regulations to secure removal or reduction, whatever the case may be.

Q. And is this true of any, any land within the

(Testimony of Gordon Powers.)

confines of the boundaries of the unit, whether it be deeded or competent or noncompetent lease?

A. Yes, that is true, in the case where the competent leased and deeded land is listed as a part of the grazing permit, for on and off stocking; where it is not part of the on and off stocking, then it has [115] nothing to do with the permit or the range unit boundary, and I mean by that, that in the case of range unit 19 for instance, the range unit boundary, originally was much larger than it is now, and at the time Mr. Fraser held the range unit 19 its boundary at that time enclosed the land that Mr. Fraser had under competent lease, and owned through fee patent, as well as the permitted land. When he lost the permit, naturally that range unit no longer, or the grazing permit could not longer include those lands Mr. Fraser controlled through competent lease and deeded ownership, the permit could not include those lands in favor of some new permittee because the new permittee did not control them and could not claim them for on and off use, and that naturally strung the unit boundary to only those lands that could be permitted to a permittee other than Mr. Fraser.

Q. But you think my question was that if some of this deeded land and competent lease land was within the unit, say unit 19, then that land, the agency, if there was somebody else's cattle other than the permittees on that land, then the agency would deem that as trespass and enforce and go

(Testimony of Gordon Powers.)

through this procedure and charge these people one dollar a head, is that correct, under the trespass?

A. If those, I don't know, I am not sure I got the [116] question, if you can read that to me.

Q. Well, let me put it this way, in other words, say for instance within this unit 19 as it now sits, there is a piece of say either deeded or competent leased land, within that unit, and it is on and off, and if say Mr. Fraser's cattle in this instance were on that piece of ground as is stated, he was on some of this just straight permit land, then the Department would treat that as trespass also, or is just limited to the permitted land?

A. Our trespass counts have been made only on the permitted land and not on on-and-off land.

Q. And not on competent leased land?

A. No, if it is on-and-off, no, and if it isn't on-and-off, if it is competent leased land, we haven't counted, and counted cattle on those lands for the purpose of trespassing or assessing trespass penalties; we have counted only on the permitted land for trespass purposes.

Q. Then the Government is not involved in these trespass violations set forth in reference to these competent leases, the Government has no interest in a trespass on a competent lease, is that correct?

A. No, I can't answer that, I wouldn't make such a statement one way or the other.

Mr. Galles: That is all. [117]

(There being no further questions, the witness was excused.)

(Whereupon, court recessed at 5:10 o'clock p.m. until the following morning at 9:30 o'clock a.m.) [118]

July 3rd, 1957—9:30 A.M.

(Court resumed pursuant to recess, parties present the same as before.)

MR. CLEM CORMIER

called as a witness on behalf of the plaintiff, having been first duly sworn, testified on direct examination by Mr. Galles, as follows:

Direct Examination

By Mr. Galles:

Q. Would you state your name?

A. Clem Cormier.

Q. Where do you live?

A. Well, I live in town, but I have a ranch south of Billings.

Q. You live in Billings? A. I do.

Q. And what kind of a ranch do you have?

A. Well, raise stock and grain.

Q. Where is that located?

A. It is on the Crow Reservation and adjacent to the Crow Reservation, it is in the Pryor area.

Q. In the western part of the reservation generally, where there are colored spots on Exhibit 1?

A. Right in that area.

Q. Mr. Cormier, were you in court when Mr. Powers testified yesterday? A. I was.

Q. Now, with reference to the, to his testimony

(Testimony of Clem Cormier.)

in connection with a count of 18 horses and 3 mules, were you present on that occasion when he made the count [119] that he testified to yesterday?

A. I was.

Q. Will you state what you did with reference to that count?

A. Well, that morning, that Mr. Powers counted them horses, we come in on the unit on horseback and, oh, there at that point probably a half a mile around, half mile southeast of the corner, that they were in when Mr. Powers counted them, and we checked the brands, that is right along the reservation fence, and it is adjacent to, I think it joins his land, but the reason we brought them into this corner was so we could hold them, someplace to check the brands.

Q. And when you first saw the horses, were they being driven by anybody? A. No.

Q. How were they located?

A. They was just grazing, just grazing in this area.

Q. And how far from that corner and what direction did you say it was?

A. I would say about a half a mile south and east approximately.

Q. And what land was it, whose land?

A. Well——

Q. That you found the horses?

A. It is a unit held by Cormier brothers. [120]

Q. Is that under a permit?

A. Under permit.

(Testimony of Clem Cormier.)

Q. What unit is it?

A. I believe it is referred to as 19 now.

Q. 19?

A. Yes, it is practically every three years that unit numbers do change, and I don't have very much to do with leasing, that is taken care of by my partner, and I would have to refer to be exact, I would have to refer to the map.

Q. Who is your partner? A. Joe Cormier.

Q. Is he your brother?

A. He is my brother.

Q. Mr. Cormier, I will show you what appears to be your affidavit, attached to the motion for preliminary injunction, and ask you if that is your signature, and you made that affidavit?

A. That is my signature.

Q. Would you look the affidavit over, please?

A. (Witness complying.)

Q. Do you recall that day in June of 1945, Mr. Cormier, that is referred to in the affidavit you have just read? A. I do.

Q. Will you state what you did on that day and what you observed? [121]

A. Well, I observed these sheep, I went up early in the morning and I observed these sheep grazing on our leases, and I think I went back to my ranch house on Blue Creek and I contacted the Indian Service and notified them of the trespass.

Q. How many sheep were there?

A. There was about 800 sheep, it says 821 here.

Q. How were they marked or branded?

(Testimony of Clem Cormier.)

A. They had a [10] on, I think, the left side.

Q. What day was that when you observed them?

A. Well, it says approximately here, approximately June 12th.

Q. And you recall that was when it was, or when you made the affidavit, do you know that that was when it was?

A. Well, I think there is certain references that were available at that time, that we are sure the figures are correct, there are other incidents that led up to that, too.

Q. Where did you find this band of about 800 sheep?

A. Well, they were on the south, on the south portion of the unit held by Cormier brothers at that time, I don't even recall what the designation of the unit was at that time.

Q. Will you refer to the affidavit and give the legal description?

A. Section 12 and Section 13, Township 4 South, Range [122] 25 East.

Q. And you say that was under permit to you and your brother at the time?

A. That is right.

Mr. Galles: You may examine.

(Testimony of Clem Cormier.)

Cross-Examination

By Mr. Jones :

Q. Mr. Cormier, are you the same Clem Cormier that testified in the case of Robert, R. B. Fraser, versus Robert Roods?

A. I testified in that.

Q. You testified on behalf of Robert Roods, is that correct? A. Sir?

Q. You testified on behalf of Robert Roods as his witness?

A. Well, I suppose I would be his witness.

Q. And you also testified in behalf of Orie Dossdall in the legal action in District Court in behalf of Mr. Dossdall against Mr. Fraser, is that right?

A. What?

Q. That is in reference to these Hansen lease?

A. Yes, I did.

Q. And you have been involved as an either plaintiff or defendant in numerous lawsuits against Mr. Fraser, is that right? A. I have. [123]

Q. Mr. Cormier, do you know who the lessor was, the Indian lessor of this land in Sections 12 and 13, of Township 4 South, Range 25?

A. You mean the Indian owner?

Q. Yes.

A. I wouldn't know without going——

Q. But you had a lease on it?

A. I know we had a lease on that area, that is right, it wasn't a lease, I think it was a permit.

Q. Have you discussed this permit question with

(Testimony of Clem Cormier.)

your attorney, with United States Attorney—Mr. Galles? A. No, I haven't.

Q. When you testified in this affidavit in 1956, when you made this affidavit, had you discussed whether this land was under permit or under lease to you and your brother?

A. Did I discuss it with who?

Q. With Mr. Galles?

A. Well, I will tell you there has been so many of these actions that for me to pick out any specific one without some reference, it is rather confusing.

Q. In other words, you don't know, you didn't know at that time and you don't know right now whether that land is under, whether it is under permit, a competent lease or office lease, do you?

A. I know that we definitely held a permit in that area, and within the permit, the boundaries of the [124] permit, that we have and we do now, hold certain pieces of competent land or competent leases, wherein we enter into an on-and-off agreement with the Superintendent, but it is all operated as a unit.

Q. You say these sheep were spread out in Sections 12 and 13, were they all over the Section?

A. Oh, they probably were scattered over probably a quarter of a mile square area, they could have been a half a mile square area, sheep generally, when they graze, they are scattered, they are moving all of the time.

Q. You don't know whereabouts in Section 12 and 13 these were located?

A. I couldn't pinpoint it, because actually the

(Testimony of Clem Cormier.)

sheep weren't standing still, when sheep graze they keep moving, they don't stand in any one particular spot, and we weren't molesting the sheep, we were just observing them.

Q. Well, do you know whether they were in Section 12 or Section 13?

A. Well, the affidavit says 12 and 13.

Q. But do you know whether they were at the time you made up the affidavit?

A. At the time the sheep were there, I was pretty sure where they had been, where the cornerstones are, we know there are certain landmarks that are related to the areas out there, that you can come pretty close to describing the area. [125]

Q. Did you locate these landmarks at the time?

A. I would say we did, yes.

Q. Who do you mean by "we"?

A. Well, there is a Mr. Erb Landon there, and I think there was two other men from the Indian Service, actually they are the ones that checked the landmarks, I was there and seen them locate them.

Q. In other words, you were with Mr. Landon and who else?

A. I don't recall the other man's name, but I do recall Mr. Landon.

Q. You weren't with your brother at the time?

A. As I recall, no, I don't think I was.

Q. I notice you state in your permit that you hadn't given anybody consent to run these sheep on this land, is that correct?

A. That is correct.

Q. Have you at times allowed people, consented

(Testimony of Clem Cormier.)

to people to run their livestock on some of this permitted land? A. You mean gratis?

Q. Well no, with charge?

A. I have run cattle, my partner and I have pastured cattle.

Q. Other people's cattle? A. That is right.

Q. And permitted them on this permitted land that you [126] have under permit?

A. Yes, that is after, after listing the brand down at Crow Agency, which is the procedure.

Q. Didn't Mr. Jack Crawford have a lease on this Section 14, Township 4 of Range 25 East at that time, didn't he have a lease in there, too?

A. Mr. Crawford—I couldn't describe the various areas that Crawford has leases in over there, he has got some adjoining and at that time, one time Crawford was using some land, it is further, it is further east of there that an Indian made a lease to anyone on, the Indian had, he had, oh, I guess retained it possibly for his own use, but O. W. Crawford claimed some land in that area, but it is further east of there, I think, I am not a lease man, my brother takes care of all the leases and he could give you very accurate information on it.

Q. In other words, you didn't have a lease on all the lands in Section 13, is that right, 4 South of Range 25 East, you didn't have a lease on all of 13, did you?

A. I would have to, I would have to resort to my leases to know, because I have already stated that I am not the lease man for the outfit.

(Testimony of Clem Cormier.)

Q. Well, you stated in this affidavit that you had a lease, and you and your brother had a valid lease to this land under a valid lease to you and your brother? [127]

A. Well, I am pretty sure that at the time we made up the affidavit, that we probably had a map or plat there, we possibly had our leases there, and it was made with reference to facts.

Q. That is when you made this affidavit, is that right? A. Yes, I think so.

Q. And that affidavit, you don't remember now, in other words you are going by the affidavit now, you don't remember actually what happened in 1945 do you, except from that affidavit, is that right?

A. Oh, no, I definitely remember the sheep being there, I remember the sheep being there, I remember the sheep being there for a period of possibly a month, not just for a day or two, over a long period of time, this is just an incident where we counted the sheep, there is also——

Q. But in reference to this lease business, you don't recall whether you had a lease or not, is that right?

A. Oh, I know we had the leases, there is no question in my mind but what we had the lease.

Q. That is the lease on Section——

A. I would say we had a permit in the area.

Q. And, in other words, I think you stated here, that you yourself were not the lease man and you didn't know just what kind of a lease you had on there, is that right?

(Testimony of Clem Cormier.)

A. No, I know that we held a unit there, and I say that [128] within the unit we could have had some competent leases, but they were included in the operational use of the unit through an on-and-off agreement with the Indian Service, but that is definitely a unit area.

Q. What unit was that, do you know?

A. I don't know what the name of the unit was at that time, it seems to me it might have been 28, they have changed them unit numbers every, most of them are changed every five years.

Q. Well, was it a unit or was it a valid lease that you and your brother had, that is what I am trying to get at, whether it was a lease or whether it was a unit, you have stated it was a lease in your affidavit, that is what I am trying to find out?

A. Well, just like I said before, I am not a lease expert.

Q. Well, you were there when this affidavit was made out, and evidently from your testimony that you went over these maps and determined whether you had a valid lease on there, is that right?

A. That is right, I testified that we resorted to our maps or to actual leases in making up the affidavit, but for me to go back in my memory and tell you every competent lease we hold or every office lease we hold would be entirely possible.

Q. I realize that, was this affidavit made up from [129] looking at one of these plat books, is that how you made it up, or do you recall?

A. Well, we have little maps like this, we have

(Testimony of Clem Cormier.)

some of the older unit maps with the boundaries of the units clearly defined on them, and they are, of course, marked, they have got the range and sections and townships and——

Q. And this is when you checked out as to where that—at the time you made up this affidavit, is the time when you checked it off on this map, is that right? A. Not on this map.

Q. Well, on the map?

A. Something similar, I imagine, either a plat or a unit map.

Q. You didn't check it out at the time you saw the sheep then, is that right?

A. Well, I imagine at that time I was very much more familiar with that area because I was operating in that area and since then I am operating in a different area altogether.

Q. In other words, this map, this affidavit made in 1956 was made from your recollection, is that right?

A. No, I said it was made from copies of leases that we held and from plats and maps, because after a period of time as long as that, you would have to resort to something factual to know what you are doing and in making an affidavit I am positive that I went, [130] I wouldn't sign any, I wouldn't sign my name to anything that was false.

Mr. Jones: That is all.

(There being no further questions, the witness was excused.) [131]

MR. JOE CORMIER

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified on direct examination by Mr. Galles, as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name and where you live?

A. Joe A. Cormier, and my residence is here in Billings, and I live at the ranch in the summer.

Q. You are a rancher? A. Yes, sir.

Q. What kind of a ranch do you have?

A. Grain and livestock.

Q. Where is it located?

A. It is on the Crow Reservation.

Q. Are you in partnership with your brother Clem Cormier? A. I am.

Q. And he was the witness that just testified?

A. He was.

Q. He made some reference to this 1945 count of sheep on Sections 12 and 13, in Township 4 South, Range 25 East. He also said that you were the lease man of the partnership? A. That is right.

Q. Would you have any record with you that would show whether that, whether those sections were under lease or permit, Mr. Cormier?

A. Yes, I don't have any records, I have memory of it. [132]

Q. Well——

A. What particular date are you referring to now?

Q. On or about June 12th, 1945?

(Testimony of Joe Cormier.)

A. And what description of land?

Q. That is Sections 12 and 13, Township 4 South, Range 25 East?

A. All of the land in those two sections?

Q. Yes.

A. Could I have a map for reference?

Mr. Jones: Your Honor, we will object to any testimony of this witness in reference to what he knows about the ownership or leasing of Sections 12 and 13, on the grounds and for the reasons that no proper foundation has been laid, and that it is not the best evidence.

Mr. Galles: Well, the witness says he can remember.

The Court: Yes, counsel went into that quite thoroughly with the other witness and I think I will permit him to answer—objection overruled.

Q. Would this map be of assistance to you, Exhibit 1, or maybe we need Exhibit 3 at this point, oh no, maybe this is the one, would Exhibit 2 be of assistance?

A. Is this, what exhibit number, this is Exhibit 2?

Q. Yes. [133]

A. This will partially help, although this code here has reference to dates 195—

Mr. Jones: Just a minute, your Honor, I would like to ask a question on voir dire.

The Court: All right.

(Testimony of Joe Cormier.)

Voir Dire Examination

By Mr. Jones:

Q. In other words, you are going to testify from this code in Plaintiff's Exhibit No. 2?

A. This code will not apply to the land that you are asking the question about as of June 12th, 1945.

(Continuation of direct examination by Mr. Galles.)

Q. All right, with that understanding, will you proceed then, please?

A. There was one allotment of land in that area if I could have reference to an allotment then, I could tell you the different pieces of ground that was not in the unit permit, the rest of it was in there.

Q. Do you have such an allotment map with you? A. Yes, I do.

Q. Would you get it, it is your property and your map?

A. It is—allotment of George Shows Little, that portion of it that lays within Section 13, was not in the permit.

Q. How much area of Section 13 is that allotment? [134]

A. One hundred and twenty acres.

Q. And in which portion of Section 13?

A. It would be along the southern boundary of Section 13.

Q. Then was all of the other Sections, were all

(Testimony of Joe Cormier.)

of the other Sections, 12 and 13, except that 20 acres in the permit? A. Yes.

Q. And permitted to whom?

A. Cormier brothers.

Q. Would you take the document that is on the reporter's desk, Motion for Preliminary Injunction, and toward the back of that document, is an affidavit which is purported to be executed by you, would you state whether or not you did execute that affidavit?

A. On page 2?

Q. On page 2 of the affidavit that you executed, appears your signature.

A. Here is one bearing my signature.

Q. You did execute that affidavit?

A. I will read it, yes, that is my affidavit.

Q. Calling your attention to January 30th, 1952, did you make a livestock count on that day out in your area? A. Yes, sir.

Q. Would you state what you did and saw?

A. I counted about 300 head of cattle, branded VC and [2].

Q. Was anyone with you?

A. My brother and Mr. Powers.

Q. And on what land was the cattle located, if you know?

A. According to the affidavit, it describes the land here.

Q. Well, do you recall from your——

A. Yes, I recall but I couldn't tell you those exact descriptions without having reference to something that I made record of at the time.

(Testimony of Joe Cormier.)

Q. When you made this affidavit, you knew that the land description contained in there was correct?

A. Positively identified, I went with Mr. Powers and we checked the corners on these, the stones, the quarter corners and the section corners on these lands that we described in the affidavit.

Q. And what is the description of the land on which you found this 300 head of cattle?

A. Specifically, the West Half of the Northeast Quarter of Section 3, and the North Half of Section 4, all in Township 4 South, Range 26 East, and the North Half of the Southwest Quarter, and the Northwest Quarter of Section 31, the Southeast Quarter of Section 32, the South Half of the South Half of the Northeast Quarter, and the South Half of Section 33; the West Half and the Southeast Quarter of Section 34, all in Township 3 South, Range 26 East. [136]

Q. Whose land was that?

A. They were under lease to Cormier brothers.

Q. From whom?

A. From—through permit and competent leases, through permit from the Crow Agency and competent leases of the competent Indians that owned the lands in that, in those descriptions.

Q. Do you know whose cattle, whose those 300 cattle branded VC and [2], they were?

A. Well, the VC were Mr. Fraser's, and from the information I gathered on the recording of the [2] brand, they belonged to Mr. Linderman.

(Testimony of Joe Cormier.)

Q. Do you know how much of each head there were with the different brand?

A. As of what date?

Q. On January 30th, 1952?

A. I don't recall that, on January 30th, we wrote down an accurate count as to each particular brand.

Q. Then all you can say now, there was so much of each? A. That is right, principally VC.

Q. More VC brands than [2]?

A. Many more.

Q. What proportion can you, can you give an estimate?

A. I would say three to four to one.

Mr. Jones: Just a minute, your Honor, we will ask that that be stricken on the grounds and for the reasons that the [137] question has been asked and answered, he didn't know, he didn't break them down.

The Court: Objection overruled.

Q. Now, referring to the following day, January 31st, 1952, did you make a count of livestock on land in the vicinity of your ranch? A. Yes.

Q. Who was with you then?

A. My brother and Mr. Powers.

Q. What did you find?

A. Oh, we found 28 head of cattle branded with a [2] and 27 head of cattle with the VC.

Q. Where were they located?

A. In the Southwest Quarter of Section 33, in Township 3 South, Range 26 East.

(Testimony of Joe Cormier.)

Q. Your affidavit says 27 East, but it should be 26 East?

A. That is a typographical error, it should be 26 East.

Q. Whose land was that?

A. It was Cormier brothers, permit land or competent leased land.

Q. All right, did you find other cattle on the 31st of January, '52?

A. Well, that was all, January 31st.

Q. I notice your affidavit says, and 28 cattle branded [2], right ribs or VC right ribs grazing on Lots 2 and 3, Section 31?

A. I believe I answered that earlier. [138]

Q. Oh, did you, whose land was that then?

A. Cormier brothers.

Q. And was that under permit or lease?

A. Either permit or competent lease.

Q. Do you know which?

A. I couldn't identify it from the map.

Q. From the map you have on front of you?

A. Yes, sir.

Q. Would you do so, please?

A. I will have to have the one, the map covering the 3 South, 26 East.

Q. I will hand you Plaintiff's Exhibit No. 2.

Mr. Jones: Just a minute, could I, which piece of ground are you talking about now?

A. Southwest of 33.

Q. Well, I would like to have you tell me on the lands described in your affidavit referring to Janu-

(Testimony of Joe Cormier.)

ary 31st, whether the land therein described is either under permit or lease?

A. Well, that is the Southwest Quarter of Section 33, and Lots 2 and 3 in Section 31.

Q. Yes.

A. I would need the Indian allotment map to identify the land that was in the permit schedule.

Q. Now, where——

A. I have a copy. [139]

Q. You have your own records that you can testify from? A. Yes, sir.

Q. Will you get them please?

A. (Witness complying.) The Southwest Quarter of Section 3 in 3 South, 26 East was land under permit.

Q. All right, as to Lots 2 and 3 in Section 31——

A. I need one more map, I see here that the descriptions call for Range 27 East, could I check the map in Range 27 East to——

Q. Well now, no, the one I am referring to is where you said you found the 28 head of cattle on Lots 2 and 3, if that is the last line of your affidavit, which is Section 31, Township 3 South, Range 26 East?

A. I believe that is a typographical error.

Q. All right, where did you find the cattle that is the 28 head branded [2] or VC?

A. They would be immediately——

Mr. Jones: Just a minute, your Honor, we will object to any testimony in reference to Section 31, Lots 2 and 3 in Section 31, Township 3 South of

(Testimony of Joe Cormier.)

Range 27 East, on the grounds and for the reasons that it is incompetent, irrelevant and immaterial. It is not one of the issues in this case, it comes as a complete surprise to this defendant, to any trespasses in that area, this thing was went into at the pretrial conference, and the land was [140] determined, and we have no knowledge whatsoever as to any trespasses in 3 South of Range 27.

The Court: Objection sustained.

Mr. Galles: Well, your Honor, we did not allege in our complaint where the trespasses took place, and as I recall the pretrial order and agreement was just that certain lands would be agreed upon, in fact it wasn't covered in the order, we agreed among ourselves that these three maps, Exhibits 1, 2 and 3, could be received in evidence. What I am trying to do is to show it—

Mr. Jones: Well, your Honor, I frankly think there is no mistake, I think all along that it has been 3 South of Range 26, and not 27.

Mr. Galles: That is a matter then you could go into on cross-examination, isn't it?

Mr. Jones: I don't think that it is relevant, as to 3 South of Range 27, we have been taken completely by surprise, we don't know what happened in that.

The Court: This, I presume this relates solely to the question of injunction doesn't it?

Mr. Galles: Yes, that is right, it [141] is on the injunction, count—

The Court: The affidavit in support of the preliminary motion for—would refer to specific land,

(Testimony of Joe Cormier.)

I think that is the point that Mr. Jones is making.

Mr. Jones: Well of course it goes into this question of injunction, and I think in our pretrial brief, this whole question is whether, being raised, is whether or not it is competent land, or office leased land, or strictly permitted land, as to whether or not this regulation applies. If it applies at all, and we do not have any information whatever as to anything in Lots 2 or 3 in Section 31 of 3 South 27, we don't know whether it is permitted or whether it was leased land, and this witness has no records, actually the whole reason that this testimony in reference to these leases or permitted land is being allowed in, is the fact that we did go into the office at Crow Agency, and these maps, we have, pretty well show what the holdings were, and for us to go into something that is not involved in here, maybe we didn't enter into it any— —

The Court: Well, there is—the court recalls there was a correction at the pretrial [142] conference but——

Mr. Jones: No, that is not this land, your

The Court: One tract of land, there was a typographical error, that is not this land is it?

Mr. Jones: No, that is not this land, your Honor.

Mr. Galles: What we are attempting to do by this witness, is, he stated that he found 28 cattle, he stated what the description was according to the affidavit, and then when he goes to determine whether it is permitted or leased, why he finds a

(Testimony of Joe Cormier.)

mistake and I think he is entitled to explain where he found the cattle, or if there was a mistake in the description he previously testified to.

The Court: On the other hand, the defendant has not had an opportunity to check the other land, that is not described in the affidavit, I think he should be given that opportunity if that goes in.

Mr. Galles: Of course, our contention is that the affidavit attached to the motion for preliminary injunction is not part of the pleadings in the case, we are going to trial on the complaint, the answer and the pretrial [143] order, and this is evidence within the framework of those pleadings, I don't believe we are bound by the affidavits attached to the motion.

The Court: Well, now is it the position of the Government, that any land could be, that the witness could go into any land whatever at this time?

Mr. Galles: Any land on the dates alleged, and the number of cattle alleged in our complaint wherever he found on January 30th, now he is, there is testimony to amend the pleadings by one day, we have alleged January 30, 1952, he said it was January 31st, but there are 55 cattle; now we don't allege where those cattle were in our complaint. Incidentally, our affidavit for preliminary injunction specifies where, but I don't believe that binds us in this, in the trial of this at this stage of the game.

The Court: Well, I will permit him to answer for whatever it may be worth.

(Testimony of Joe Cormier.)

Q. Mr. Cormier, referring to the 28 head of cattle that you found on January 31st, branded [2] right ribs, or VC right ribs, can you state now the legal description of where you found the 28 head?

A. It would be the land immediately south of the first location, Lots 3 and 4 in Section 4, of Township 4 [144] South, Range 26 East, the cattle were more or less in one spread out group, and this 28 head lay to the south side of the township line that divides its last description from the first description.

Q. Now, I want to call your attention to the fact in your affidavit, executed on the 2nd day of May, 1956, which is attached to the motion for preliminary injunction, you stated that 28 head was found by you on Lots 2 and 3, Section 31, Township 3 South, Range 26 East; can you explain the difference in those description?

A. I can only say that there are errors in printing.

Q. Do you know where these, the description of Lots 2 and 3, Section 31, was obtained, did you furnish that description in the first place for the preparation of this affidavit?

A. Not Lots 2 and 3, Section 31.

Q. How far away from the land described in the affidavit is the land that you have orally testified to, Lots 3 and 4 of Section 4?

A. Oh, I would say it would be a couple of miles.

(Testimony of Joe Cormier.)

Q. Who had the land, had the control or ownership or otherwise of the land on which you found the 28 head that you have orally testified to?

A. As of which—that I orally testified, Cormier brothers under permit.

Q. Under permit? [145] A. (No reply.)

Q. Referring to February 13th, 1952, did you have an occasion to make a livestock count in the area of your ranch? A. Yes, I did.

Q. How many cattle did you find?

A. 49 cows branded VC on the right ribs.

Q. And what location?

A. North Half of the Southeast Quarter of Section 33, Township 3 South, Range 26 East.

Q. And who had the ownership or control of that land? A. Permitted to Cormier brothers.

Q. Well, you state in your affidavit that it was under lease, did you distinguish being permitted and under lease?

A. Well, technically, I suppose there is a distinction, but we refer to lease and permit in the same light, as exercising control.

Q. All right, did you observe any other cattle that day?

A. Thirty-three cattle branded VC on the right ribs and two steers branded [2] on Lot 2 of Section 4, Township 4 South, Range 26 East.

Q. Who had the control or ownership of that land?

A. That it permitted land to Cormier brothers.

Q. Who was with you on this day?

(Testimony of Joe Cormier.)

A. The 13th?

Q. Yes, of February, 1952? [146]

A. Mr. Powers and my brother.

Q. Mr. Powers testified to that when he was on the stand? A. Yes, he did.

Q. Going back to January 30th, 1952, which is in the forepart of your affidavit, in connection with 300 head of cattle, can you tell from the records that you have here, whether the land description that you testified to, where, who the lease, who had the lease or permit or control of that land?

A. The West Half of the Northeast Quarter of Section 4 is under permit to Cormier brothers.

Mr. Jones: Just a minute, I think for the record, he is referring to Section 3, aren't you?

Mr. Galles: I think for your convenience, I will read off the land description that you testified to, that is the West Half of the Northeast Quarter of Section 3, in 4 South, Range 26 East.

A. The West Half of the Northeast Quarter of Section 3 is under permit to, was under permit to Cormier brothers.

Q. On January 30th of '52? A. Correct.

Q. And the North Half of Section 4 in the same Township and Range? [147]

A. Under permit to Cormier brothers.

Q. The North Half of the Southwest and the Northwest Quarter of Section 31, of 3 South, 26 East?

A. Under competent lease to Cormier brothers.

Q. Southeast Quarter of Section 32?

(Testimony of Joe Cormier.)

A. Under competent lease to Cormier brothers.

Q. South Half—

A. Pardon, the last?

Q. The Southeast of Section 32, I think you answered competent lease on that one.

A. Well, I want to correct that, that is South-east of 32, is permit land to Cormier brothers.

Q. All right, South Half of the South Half of the Northeast of Section 33?

A. That was under permit to Cormier brothers.

Q. And the South Half of the same Section?

A. Under permit to Cormier brothers.

Q. The West Half of the Southeast Quarter of Section 34?

A. Under permit to Cormier brothers.

Mr. Galles: That is all, you may examine.

Cross-Examination

By Mr. Jones:

Q. Mr. Cormier, I think we have some testimony in reference to trespassing on Lots 2 and 3 of Section 31, 3 South, of Range 26 East, and you said that [148] was a mistake in description, is that right? A. Lots 2 and 3 of Section 31?

Q. Yes. A. That is right.

Q. That is a mistake, there wasn't, you didn't find any cattle in there, is that right?

A. That is right.

Q. And you were with Mr. Powers all of the time, is that correct, I mean Mr. Powers and your brother were with you, weren't they, when you

(Testimony of Joe Cormier.)

were in there? A. Yes.

Q. And these cattle, these 28 head of cattle, were found in, was it Section 4 of Township 4 South, Range 26, is that right, instead of over in Section 31? A. Yes, in Section 4.

Q. Then Mr. Powers is wrong when he testified to the fact that they were in Section 31, is that right?

Mr. Galles: I don't think he testified to that, Mr. Jones.

Mr. Jones: Yes, he did.

The Court: Yes, he did.

Mr. Galles: Well that was on an affidavit.

The Court: This was, I have kept track of under count six, at least I have a notation there of Lots 2 and 3, Section 31. [149]

Mr. Galles: Oh, that is right, I beg your pardon.

A. I may not have been with him when he saw cattle, where he said he saw them, however, I do recall that he was there that day, and that I was with him at different times.

Q. I believe that you testified you and Mr. Powers and your brother definitely located all these corners and quarter corners, is that right, positively establish the location of when you saw these cattle, is that right? A. Yes.

Q. In other words, you located the corner lines in Sections 32 and of the—you've located the section corner at the Southwest corner of Section 33, 3 South, of 26 East, did you?

A. On the South Half of Section 33.

(Testimony of Joe Cormier.)

Q. Yes, the Southwest corner of that section?

A. Yes, we generally located all the corners in the area under discussion.

Q. Located—you went there and you dug around and found it, is that right? A. Yes.

Q. What does that corner look like, do you know, do you recall?

A. That is a rock survey, all the markings there are rocks. [150]

Q. Is it a rock? A. Yes, sir.

Q. Is it a big rock or is it a buried rock, or what does it look like?

A. Well, they are generally rocks that are common to the area, where the survey is made, and they will run eight to ten inches high and stuck in the ground.

Q. How about this rock, do you recall what that rock looked like?

A. I don't recall definitely what that rock looked like.

Q. Well, was it easy to locate?

A. Comparatively easy.

Q. What do you mean by comparatively easy?

A. In many cases there are piles of rock placed along the survey rock.

Q. Was it a pile of rocks in this instance, that is the Southeast Quarter of Section 33, 3 South of Range 26?

A. At that particular instance, I am not positive.

Q. Not positive, how about the quarter corner

(Testimony of Joe Cormier.)

of the Southwest corner, that is the Southeast Quarter corner of the Southwest Quarter of Section 33, did you locate that rock?

A. The Southwest Quarter corner of Section 33?

Q. Yes. A. Yes.

Q. What, do you know what that rock looked like? [151]

A. Not in particular, just rock, with quarter mark on it.

Q. Well, did you locate these different lines between these forty acre tracts, any of those corners at the time?

A. Do you mean a sixteenth rock?

Q. Yes, I guess it would be a——

A. No, there are no sixteenth rocks in the survey there.

Q. In other words, it is just the quarter sections?

A. Quarters and sections.

Q. And did you locate the quarter corners in Section 34 of the Southwest corner?

A. Southwest of 34?

Q. Yes. A. Yes, sir.

Q. And did you locate the quarter corners of the Southeast of 34? A. Yes, sir.

Q. And did you locate the quarter corners, that is on this date, this time I am talking about when you and Mr. Powers and your brother were out there? A. Yes.

Q. Did you locate the quarter corners on the Northwest corner of Section 34?

(Testimony of Joe Cormier.)

A. Which corner of the Northwest Quarter?

Q. Well, all of them, as I understand you located all these corners, you really had her pinned down, is [152] that right, you located them all?

A. Yes.

Q. Now how about this Northwest corner, is that, those corners they are pretty easy to identify or—

A. Northwest corner of which section?

Q. Well these quarter corners in the Northwest Quarter, the four corners there, were they easy to identify?

A. In which section?

Q. In Section 34, pardon me?

A. Northwest corner?

Q. Northwest Quarter, there were four corners, that constitute the quarter corners of the Section 34 there, of the Northwest Quarter?

A. You mean the center of the section, when you say is four?

Q. No, I mean these four quarter corners of the Northwest Quarter of Section 34?

A. By which stones are you referring to?

Q. I am referring to these four corners?

A. There are stones at this corner.

Q. Which corner is that now?

A. That would be the Northwest corner of the Southwest Quarter of 34.

Q. And 3 South of 26 East?

A. That is right, and there is a stone on the Northwest corner of the Northwest Quarter of Section 34, there is a stone on the Northeast corner of

(Testimony of Joe Cormier.)

the Northwest [153] Quarter of Section 34; there is no stone in the center of the section.

Q. And you located all these corners did you?

A. The ones I have just testified, yes.

Q. Well now, I think you also testified that you located these section corners in Section 33, is that right, the section corners?

A. That is correct.

Q. Now did you locate the corners over in Section 3 South, Section 31 of 3 South of Range 26 East?

Mr. Galles: Object to this as being repetitious, I don't know what the purpose is, if there is some purpose fine, but it would be irrelevant.

Mr. Jones: Oh, we don't think it's irrelevant, your Honor, they testified they located all of these, I am just——

The Court: What date is this on Section 3, I am getting confused.

Mr. Jones: On Section 3, I am referring to this date of January 31st of 1952.

The Court: Well is there any testimony with respect to Section 3 on that date, Mr. Jones?

Mr. Jones: I am talking of Lots 2 and 3, pardon me, of Section 31, that this land that he says was under competent lease. [154]

The Court: Hasn't he testified that that is in error, Lots 2 and 3 of Section 31?

Mr. Jones: Well, we will strike that.

Q. Were these quarter corners, these corners located on the ground or by map or by aerial photo-

(Testimony of Joe Cormier.)

graphs and by map, these lease maps such as you have here, is that how you located or did you actually locate them on the ground?

A. I located them on the ground, I am really familiar with that area, and I know where most of those stores are, and if I recall correctly, Mr. Powers had an aerial photo and he went to one of these points for a beginning, a check point, and made his observations from there.

Q. How long were you in this area on January 31st, 1952, with Mr. Powers?

A. Oh, maybe a couple of hours.

Q. How long were you in the area on January 30th, 1952? A. A couple of hours.

Q. And Mr. Cormier, your main recollection as to this description of this land, comes from the affidavit that you executed on May 2nd, 1956, is that correct, that affidavit you have in front of you?

A. Yes, and I remember, I remember distinctly.

Q. And you read that affidavit very carefully, just like you read it here at the time you signed it? [155] A. I presume I did.

Q. Well, do you recall whether you did or you didn't?

A. Well, I must have read it.

Mr. Jones: That is all.

(There being no further questions, the witness was excused.)

(Whereupon, the court took a short recess; court resumed pursuant to recess, parties present the same as before.) [156]

MR. JOE A. CORMIER

recalled as a witness on behalf of the Plaintiff, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Mr. Cormier, during the short recess we have had, have you had an opportunity to go over your plat and affidavit again? A. I did.

Q. And when you testified that you saw these 28 cattle on Lots 3 and 4 of Section 4, 4 South of 26 East— A. What section number?

Q. Section 4, I mean you said the affidavit was wrong and you saw these cattle on a different land description, what were you referring to when you made that conclusion?

A. Well in this, there are cattle all over that area, when we counted, I mean when we rode through there, there were cattle all over that area and Mr. Powers didn't count with me down there, however, he did count up here on 31.

Q. And you, the map you hold in your hand is that a large or small scale map?

A. Well, it is a small scale, it is identical with the—that large map back there, but I have difficulty in reading these lot numbers from this map, I need a reading glass really.

Q. During the recess, have you compared the small map with the larger map? [157]

A. I did.

Q. What have you to say now with where you

(Testimony of Joe Cormier.)

found the 28 head of cattle branded [2] right ribs, or VC, right ribs?

A. The affidavit is the correct description.

Q. And you recall having counted 28 head of cattle on the land described originally in the affidavit?

A. I do.

Mr. Galles: That is all.

Cross-Examination

By Mr. Jones:

Q. I believe you testified, Mr. Cormier, previously that you went over in Section 31, is that right, that may be Mr. Powers' count on those, but you didn't?

A. I may not have been there at the same time.

Q. Oh, I see.

Mr. Jones: That is all.

(There being no further questions, the witness was excused.) [158]

MR. ORIE DOSDALL

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name and where you live?

A. My name is Orie Dosedall, and I live about six miles north of Pryor.

(Testimony of Orié Dosdall.)

Q. What do you do? A. I am a farmer.

Q. Do you have livestock?

A. A few head, yes.

Q. Is your farm on the Crow Indian Reservation?
A. Yes, sir.

Q. All of it? A. Yes.

Q. Within the boundaries?

A. Within the boundaries of the Crow Indian Reservation.

Q. I will hand you an affidavit that you executed, Mr. Dosdall, which is attached to the Motion for Preliminary Injunction, filed in this action, and ask you if you recall having made that affidavit?

A. Well if my signature is on the bottom of it, I made it, I mean I signed it and everything is in there is true.

Q. Do you recall the morning of December 17th, 1955?
A. I do.

Q. And what did you do and find with reference to a livestock count? [159]

A. Well, I found a bunch of Fraser's cattle, and Charlie Fraser's cattle in on my office and competent leases.

Q. How many?

A. You mean referring to this affidavit, or just offhand?

Q. Well, do you remember offhand?

A. Offhand, there was approximately 126 of VC, and [8] and [9].

Q. When you say that, you are referring to the brands on the cattle?
A. Yes.

(Testimony of Orie Dodsall.)

Q. When you say that, you are referring to the brands of the cattle? A. Yes.

Q. And on what lands, by legal description, did you find the cattle?

A. Well, they were in 15, 16 and 17 of 4 South, Range 26 East.

Q. Those are section numbers you named first?

A. Yes, sir.

Q. Who owned or controlled that land?

A. I have some control over it.

Q. All of those sections that you have named?

A. 15 and 16, I do, and Northwest part of 17.

Q. And in what part of that description did you find these cattle? [160]

A. They were on the South part of Section 16.

Q. Now, do you have control of that land by permit or lease?

A. I have an office lease, office-approved lease, by approval of the Superintendent.

Q. Did you see any cattle at a later date in that same month?

A. Well, they were in and out of there so much, Mr. Galles, that they were in there continuously for two months, on wheat and barley.

Q. That was your wheat and barley on the land you have described? A. Yes, sir.

Q. And it was the cattle with the brands you have already described? A. Yes, sir.

Q. Was it the same herd that was in there during that period?

A. Yes, they were the same bunch of cattle.

(Testimony of Orié Dosedall.)

Q. And in your affidavit, when you state there was about a hundred head on December 17th, and December 24th, and January 21st of '56, and also up until March 6th of '56, do I understand that it was the same herd?

A. It was the same herd, there might have been a few head changed here and there, I run them out and then they would, well they took my gates and run them back in again, I mean just had no control over them. [161]

Q. Have there been other cattle, not belonging to you on your land, since March of '56?

A. Well, there has been, there was cattle run through after this restraining order was issued to Mr. Fraser, he wasn't supposed to have any cattle in there, why they took, I don't remember the exact date, but they took 350 head through me, it was, well I was seeding barley in March, it must have been around March 27th or 28th of '57.

Q. Of this year? A. Of this year.

Q. And did you identify those as cattle belonging to Mr. Fraser in any way?

A. Yes, they took them down along the fence, and I seen Fraser's men rounding them up, and Mr. Fraser's brother was in the lead with an International, a red International pickup.

Mr. Galles: That is all.

(Testimony of Orié Dosedall.)

Cross-Examination

By Mr. Jones:

Q. Mr. Dosedall, you are the same Mr. Dosedall who was involved in a legal action in District Court in reference to this land you have testified to, isn't that right? A. Yes, sir.

Q. And well, I think to save time, your Honor, I think that it is stipulated that that is part of [162] the record, and there is no use me going into it with this witness and that is all—with reference to this 350 head or so on March 27th, 1957, isn't it customary out there for one rancher to let another rancher pass through him, through his pasture out there?

A. No, not in this particular instance, Mr. Fraser won't obey a restraining order keeping them out of there, he just maliciously has taken cattle through there and horses through there, not at this time, but years before— —

Q. But there is the only time, do you know where he was going with his cattle?

A. No, I didn't know where he was going with them.

Q. Do they have land on the other side of you?

A. Yes.

Q. Have you been going through his land on the same kind of a proposition? A. No, sir.

Q. Been driving your trucks through his, across his land? A. No, sir.

(Testimony of Orié Doslall.)

Q. Well, how do you get your wheat to Edgar, don't you go across his land?

A. Well, I suppose I drive the trucks on that public road there.

Mr. Jones: That is all. [163]

(There being no further questions, the witness was excused.) [164]

MR. CLARK C. STANTON

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name and what you do?

A. My name is Clark Stanton, and I now live at New Town, North Dakota.

Q. New Town, North Dakota?

A. Yes, sir.

Q. With the Bureau of Indian Affairs?

A. Bureau of Indian Affairs.

Q. Did you formerly work at the Crow Agency Office? A. Yes.

Q. In what capacity?

A. I was Range Conservationist.

Q. Did you have an occasion to make a livestock count on May 24th, 1954, on range unit No. 19?

A. Yes.

Q. Do you recall now what you did and what you found on that date, or would it be necessary for you to refer to a memorandum?

(Testimony of Clark C. Stanton.)

A. I will have to refer to my affidavit to get the exact numbers, but this count was made during the, just a routine check which we make each year, usually on all permits.

Q. I show you the affidavit on file in this case, attached to the Motion for Preliminary Injunction, and you may use that to refresh your memory; would [165] you state what you did and saw on that date?

A. I don't remember exactly where I entered, or where I left the unit, but anyhow I come, I believe I come from the Pryor road, the road from Highway 87 to the town of Pryor, and went through the unit to the north and west, and I counted cattle, the biggest majority of these cattle were above the rim on land permitted to in range unit 19.

Q. What date was this?

A. Well, May 24th of '54.

Q. How many cattle did you find?

A. I found 182 cattle, plus 32 horses.

Q. How did you identify the ownership?

A. The horses, I was unable to read brands because those horses were hard to get close to, you couldn't get close enough to read a brand, but the cattle I was able to read the brands on the majority of the cattle.

Q. What brands were they?

A. H inside of a circle, and a VC, those two brands of the cattle.

Q. And on what land were these horses and cattle found?

(Testimony of Clark C. Stanton.)

A. They were all, as I remember, they were all on land permitted through the office and range unit.

Q. Well, can you specifically, permitted to whom? A. To Mr. Fraser.

Q. Would that, do you know, may I have the complaint, your Honor, or rather, Exhibit 9, and I will hand you [166] Exhibit 9 and ask you if you found these horses and cattle on the land described in Exhibit 9?

A. I would have to look at that plat, because I have been gone for a year, and I can't remember exactly all these descriptions.

Q. All right, I will hand you Exhibit No. 3, which is a plat of unit 19?

A. I believe the Pryor road goes through here, this is deeded land, and the cattle were right on these allotments right here, the rim, if I remember right, the rim comes right through here, and the biggest majority were up above the rim, although there was some below the rim.

Q. You are referring to the plain yellow portion of about the middle of the unit?

A. That is right.

Q. On allotments number, which one on Exhibit 3?

A. 1879, 1817, and I believe it would be 2097, too.

Q. That is colored in yellow, either plain or with some circles on it, on Exhibit No. 3?

A. That is right.

Q. Did you compute how many animal units this

(Testimony of Clark C. Stanton.)

182 head of cattle and 32 head of horses amounted to?

A. Yes, the horses converted to cow units would be half again as many horses, 32 plus 16, using the ratio of 3 to 1.

Q. And how many animal units did that group of livestock [167] consist of?

A. The 182, plus the 32 head of horses, would equal 230 cow units, which is 107 cow units over the authorized capacity of the unit.

Q. One hundred and seven cow units in excess over the number authorized by Exhibit No. 9?

A. That is right.

Mr. Galles: That is all.

Cross-Examination

By Mr. Jones:

Q. Mr. Stanton, are you pretty well acquainted out there in this area?

A. Yes, I was, I have been gone a year, I believe I still can find my way around.

Q. When you refer to the rim there, do you know where that rim or bluff, whatever it is, is located, could you locate it on the map?

A. I could approximately, it doesn't run on a straight line, it makes a big circle from the north running south and east.

Q. Will you put it on this map here for us, please?

A. (Inaudible)—to get there exact, I would have

(Testimony of Clark C. Stanton.)

to have an aerial photograph, but I can give you approximately.

Q. Do you have an aerial photograph with you of this area?

A. The rims run out of the reservation here in Section [168] 27 and 28, the rim starts about here—and angles to the north, it starts right here and angles across, comes below, that is approximately where it goes.

Q. Approximately? A. Yes.

Q. I think probably we better have you draw it on this, Plaintiff's Exhibit No. 3.

A. Could I use that aerial photograph again?

Q. In other words, that line, Mr. Stanton, that line you have drawn here on this Plaintiff's Exhibit No. 3, is approximately where the wall or bluff is located? A. That is right.

Q. And that you have heretofore testified that these cattle were located, part of them above the bluff and some down below? A. Some below.

Q. Would you tell us, Mr. Stanton, where were these cattle, were they in a bunch or were they spread out all over?

A. The ones below the rim were more or less in a bunch, because they were on the reservoir, but the ones above the rim were spread out on oh for a mile probably.

Q. A mile, would that be a mile, just a mile in circumference, or a mile north?

A. A mile running northwest.

Q. A mile? [169]

(Testimony of Clark C. Stanton.)

A. They were kind of a long string, see, there is a coulee that runs up through there, and they were on both sides of this coulee and in the bottom.

Q. Were they moving up the coulee, or just grazing? A. Just grazing.

Q. And where is this, do you know where this waterhole is, this watering place is located in this area?

A. The big reservoir?

Q. Yes, where these cattle below the rims, where it is located?

A. I think I could locate it on the aerial photograph.

Q. Well is it, would you say it is in——

A. I would say it would be right in this area right here.

Q. In allotment 2097, or where these C's, are marked on Exhibit 3, and where it is marked "C," is that it?

A. It would be right close there, yes.

Q. Mr. Stanton, I believe that you testified that these cattle below the rims, do you know how many cattle there were?

A. No, I counted them altogether.

Q. They were counted altogether?

A. (No reply.)

Q. Could you point out in here where that, in this Plaintiff's Exhibit 9, where the allotment 2097—oh yes, I see——

Mr. Jones: No further cross-examination. [170]

(Testimony of Clark C. Stanton.)

Redirect Examination

By Mr. Galles:

Q. I notice there are several letters "C" on this Exhibit 3, where you said that the large reservoir was, I wonder if you would circle the one where you think the reservoir is closest to?

A. I would have to look at that photo.

Q. I don't mean to locate it exactly, I was just wondering which "C" you were referring to when Mr. Jones was questioning?

A. The closest I can get right here, would be that, it would be in this general area, someplace in here.

Q. Would you put a circle where you are referring to when Mr. Jones was questioning you?

A. It would be around close in there.

Mr. Galles: That is all.

(There being no further questions, the witness was excused.) [171]

MR. DONALD F. FIELD

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name and where you live?

A. My name is Donald F. Field, I live in Billings, Montana.

(Testimony of Donald F. Field.)

Q. What do you do?

A. I am the Range, Area Range Conservationist for the Bureau of Indian Affairs.

Q. Does that include the Crow Indian Reservation?

A. Yes, sir.

Q. Among others? A. Yes.

Q. There has been testimony in this case that there has been over-stocking of a certain range unit and contract, and I will ask you if you are familiar with plaintiff's Exhibit 9, with the attachments?

A. I am familiar with that Exhibit.

Q. Did your office send any letter to R. B. Fraser, the permittee, in that Exhibit 9, for the over-stocking that has been testified to in this action, particularly we will start with May 24th, 1954, event of over-stocking?

A. I would like to have the privilege of looking at the file.

Q. Yes, you did bring a file with you from your office?

A. I have the Area Office file with me. [172]

Q. Is that the official records of the office?

A. It is.

Q. Maintained in the regular course of business?

A. That is right.

Q. And you are the custodian of the file?

A. I am.

Q. Would you see if you can find anything in the file on that matter?

A. Well, on November 26th, 1954, Mr. Fraser was mailed a registered letter, return receipt requested.

(Testimony of Donald F. Field.)

Q. Do you have a copy of that letter?

A. I have a copy of the letter.

Q. And do you have a copy of the return receipt?

A. I have a copy of the return receipt.

Q. Can you extract that from your file, Mr. Field, as an exhibit? A. Yes, sir.

Q. I have had the copy of the letter and the return receipt marked Plaintiff's Exhibit No. 12, and I will ask you to state what this is, Mr. Field?

A. Well, this is a duplicate original of a registered letter dated November 26th, 1954, signed by Mr. J. M. Cooper, the Area Director of the Billings Area Office, it is mailed to, addressed to Mr. R. B. Fraser, in care of R. B. Fraser, Incorporated, 2015 First Avenue North, Billings, Montana.

Q. What about the card attached, what is [173] that?

A. The attached card is the return receipt, receipt upon delivery of the registered letter.

Q. It is not signed by Mr. Fraser, but apparently someone for him.

A. The name R. B. Fraser appears here, but the name Don Scott, under it, it is dated November 27th, 1954.

Q. That is one day after the letter is dated?

A. One day after the letter was dated.

Q. And what is this letter, purport to do, what was the occasion for writing to Mr. Fraser?

Mr. Jones: Just a minute, your Honor, we will object to this on the grounds and for the reasons that no proper foundation has been laid as to

(Testimony of Donald F. Field.)

whether this witness was present, or certainly not the author of the letter.

The Court: Objection sustained.

Mr. Galles: Well, we will offer in evidence Plaintiff's Exhibit No. 12, I think it speaks for itself anyway.

Mr. Jones: We would like to ask counsel for the plaintiff what is the purpose of this?

Mr. Galles: To show demand for the payment of the amounts alleged in our complaint and our next question will be, whether or not it has been paid.

Mr. Jones: Well, your Honor, this [174] letter, we object to it on the grounds it is incompetent, irrelevant and immaterial, for the reason that it is highly prejudicial, and conclusion, that, and is, the other contents are prejudicial to the plaintiff's or the defendants' position, more prejudicial than it is enlightening.

The Court: The court understands it is offered for the purpose of showing a demand.

Mr. Galles: Yes, your Honor.

The Court: For that purpose it will be received and the objection is overruled.

Q. Mr. Field, do your records show whether or not any payment has been made for the demands for over-stocking as alleged in counts 7 and 8 of this complaint, that is, for the over-stocking of May 24th, 1954, and of November 4th, 1954?

A. Our records show that no payments have been received.

Q. Now we have alleged in our complaint that

(Testimony of Donald F. Field.)

the sum of \$687.51 should be credited by reason of a bond posted, was that bond, is that bond posted in your office or available to be credited to the amounts, the amount asked for in count 7?

A. Could I have a copy of that complaint, I don't seem to——

Q. Well, I will just tell you that in count 7, which is the count alleging over-stocking of Mr. Fraser's [175] contract, permitted land, of May 24th, 1954, shows to be a total amount due according to that letter that was just identified and received, of \$2,693.19, and the next delegation is that a portion of those penalty and fees were paid by a bond, and that the sum of \$687.50 should be credited; do you have any record of that?

A. The record will show that cash bond in the amount of \$187.51 is now on deposit with the Superintendent of the Crow Reservation, and that negotiable treasury bond in the amount of \$500.00 is filed and is on deposit in Washington, and is being held there pending the outcome of this case.

Q. And outside of those deposits or bonds, no amount has been paid?

A. To my knowledge.

Q. On these two counts?

A. To my knowledge no money has been received.

Q. Mr. Field, there has been some evidence that the contract as portrayed by Exhibit 9 has been cancelled, do you have any record when this contract was cancelled?

(Testimony of Donald F. Field.)

A. Yes, sir, this Exhibit will show the date on which the cancellation was effective.

Q. That is Exhibit No. 12 that you just identified?
A. Yes, sir.

Q. What date was the contract cancelled? [176]

A. This letter shows that the contract was cancelled effective December 31st, 1954.

Q. Had all of the grazing fees and payments, as required by the contract, been paid, as of the date of cancellation?
A. No, sir.

Q. What was due and owing, if anything?

A. Well, the entire annual fees for the remaining one year, the permit where due and payable, however, inasmuch as the unit, the grazing permit was being cancelled effective December 31, one month grazing fees were due and payable.

Q. And what could that amount to?

A. \$114.64.

Q. Was that amount paid by Mr. Fraser?

A. Not to my knowledge.

Q. Was a demand made upon him for payment?

A. A demand was made in this registered letter of November 26th, 1954.

Q. Now that amount of \$114.64 is due, in addition to the other amounts that is set forth in the letter, which is the same as in the complaint, is that correct, I am referring to the bottom of page 2?

A. That is correct.

Mr. Galles: You may examine.

Mr. Jones: No cross-examination. [177]

Defendants' Case-in-Chief

MR. R. B. FRASER

called as a witness in his own behalf, as the Defendant herein, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Jones:

Q. Will you state your name please?

A. R. B. Fraser.

Q. Are you the same R. B. Fraser who is one of the defendants in this action?

A. Yes, sir.

Q. And do you own land, own and lease land on the Crow Indian Reservation?

A. Yes, sir.

Q. And did you own and lease land on the Crow Indian Reservation in December, on December 31st, 1943?

A. I leased land, I don't know whether I owned any.

Q. You leased land at that time?

A. (No reply.)

Q. Did you own any sheep in December, on December 31, of 1943?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You have heard the testimony by Mr. Urban Landon, in reference to some sheep having trespassed on December 31st of 1943, on the Crow Indian Reservation?

A. Yes, sir.

Q. And that these sheep were branded circle

(Testimony of R. B. Fraser.)

F, and is that your, was that your brand at that time? [181]

A. Well, they don't register sheep brands.

Q. Do you recall, did you at any time own these sheep, these 1,085 head?

A. Well, I owned some sheep, I don't know whether these are the ones or not. I dealt some sheep to Jaffrays, and I suppose that he used the same brand that I had previously, which was circle F.

Q. And who was Mr. Jaffrays?

A. He owns some land out in the neighboring reservation, in neighboring Indian reservation, and in 3, 26.

Q. Did you say you transferred these sheep, transferred some sheep to Mr. Jaffrays?

A. I dealt them to Mr. Jaffrays.

Q. Do you know how many sheep you dealt to Mr. Jaffrays? A. I don't exactly.

Q. Do you know how many sheep that you sold to Mr. Jaffrays?

A. I don't, I traded to him for his ranch out there, and I don't know how many were included in that deal, it has been quite awhile ago, I had a band and I don't know how many, usually bands is around a thousand or twelve hundred sheep.

Q. The plaintiff's witness, Mr. Urban Landon, has testified that they found 2,200, found 1,085 sheep in the Southeast Quarter of the Northeast Quarter of Section 36, Township 3 South, of Range 26 East, do you have any, did you have any sheep on December 31st, 1943, [182] in that area?

(Testimony of R. B. Fraser.)

A. No, sir.

Mr. Galles: What was your answer?

A. No, sir.

Q. Did you have any sheep, did you have 2,000 head of sheep on Section 12, Township 4 South, of Range 25 East at that time? A. No, sir.

Q. Did you own any sheep being grazed on the reservation at that time?

A. I dealt them to Jaffrays, and he was running them out there.

Q. Do you recall when you dealt them to Mr. Jaffrays?

A. Well, it was around '40, I think, in the 40's, quite early in the 40's, but I don't know the exact date, no.

Q. Do you know whether it was in the year 1943, or not? A. No, sir.

Q. Do you know whether Mr. Jaffrays was running any sheep on his own or your land, did he have permission to run his sheep on your land in 1943?

A. We traded, traded leases, I had some leases and he had some leases in 3, 26, in Township 3 South, Range 26 East, and I had some in there, and he used mine and I also had some cattle that I was running his, and we traded grass.

Q. Did you own any land in 4 South, Range 25 East at this time, in 1943?

A. His ranch, that he was dealing me, that he had dealt me, was in there, was in 4, 26, or 4, 25, yes.

(Testimony of R. B. Fraser.)

Q. When you run sheep, did you have them branded with an 8 at any time?

A. No, I think that was Jaffray's own brand, he had previous to the time that I dealt with him, Jaffrays was an old sheep man, and had sheep previous to the time when I dealt with him on the ranch.

Q. Did Mr. Jaffrays work for you in 1943?

A. No, sir, he was his own man, oh I imagine he looked after cattle a little for me, if they were out there, he would tell me about it, we neighbored that way.

Q. Did Mr. Westburg work for you in 1943?

A. I think when I first got the band of sheep from up in the Judith Basin, Westburg come down with them and then I turned him over to Jaffrays, and Jaffrays told him what to do and run him from then on.

Q. And do you remember when that was?

A. Well, I can't say exactly, but it was in the early 40's when I dealt with, when I dealt with Jaffrays, why he took the sheep, why as I remember it, Westburg went with him at the time and then he was called to the army or something, I don't remember just the dates.

Q. Was Mr. Westburg working for you on December 31, 1943? [184]

A. No, sir.

Q. Mr. Fraser, I hand you Plaintiff's Exhibit 3 and ask you if you will identify from that exhibit, the land that in 1952 through '54, and up and down to the present date, that you owned and had leased?

(Testimony of R. B. Fraser.)

A. Yes, sir.

Q. Will you state what allotments and what land you had leased in this area, from this exhibit?

A. Well, the land in Section 2, and the allotment number, I think, what is that, 1452—

The Court: Mr. Jones, I think we will suspend now, the court agreed that the Billings Gas Company, or whatever it is, might run the jackhammer from noon until 2:00 o'clock. They have held up by reason of the court proceedings, but I hear it now and I'm afraid it is going to interfere with our examination, so court will recess until 2:00 o'clock.

(Whereupon, court recessed for noon; court resumed pursuant to recess at 2:00 o'clock p.m., parties present the same as before.)

(Mr. R. B. Fraser resumed the witness stand for further direct examination by Mr. Jones as follows:)

Q. You are the same Mr. Fraser who has heretofore testified before the recess? [185]

A. Yes, sir.

Q. Mr. Fraser, I hand you Plaintiff's Exhibit No. 2 which is a plat map, showing Sections 12 and 13 of Township 4 South, Range 25 East, and ask you if you know, if you recall who had Sections 12 and 13 leased in, or if anyone did in 1945?

A. Crawford had 13.

Q. Who is that?

A. Crawford, O. W. Crawford, I think it is.

(Testimony of R. B. Fraser.)

Q. Did you have any land leased in this area at that time?

A. Yes, I had my lease right south of 13, and I also had some leased in 14, the quarter section in 14, and Mr. Jaffray's land was in 10 and 11, right next to it.

Q. Was this area fenced at that time?

A. I think there was a fence as I remember it, there was a fence between, run between the south, of the South Half of Section 12 and 13, took in the bottom layer of the south 40's, and 12 and all of 13, all in one pasture, that was the north fence, and then there was a fence went right along on the east side of 12 and 13, 13 especially, there was a fence with a stockpass in 13, and there might be a stockpass there, between, with a gate in it, and 13, and I am not sure, I was fenced off from 13 or not, but I had, I run together with Crawford, I had an agreement with Crawford. We run our livestock together, more or less. [186]

Q. Now, I call your attention to the testimony by Mr. Joe Cormier, in reference to having seen three hundred head of cattle branded [1] right ribs, or Lazy Bar L, right ribs, grazing on the West Half of the Northeast Quarter of Section 3, and the North Half of Section 4, in Township 4 South, Range 26 East, M.P.M.; can you locate that on that map and will you state as to where your land is located in relation to this area?

A. Well, I have, I had land, that is considerable

(Testimony of R. B. Fraser.)

land, west of it, some land north of it, and no fence between.

Q. And can cattle pass freely from one, this area, in this area, the West Half of the Northeast Quarter of Section 3, and the North Half of Section 4, to and from your land that you have leased?

A. They did, and many of Cormiers cattle were over in my part of the ranch.

Q. Is there any water in this West Half of the Northeast Quarter of Section 3, and the North Half of Section 4?

A. There is some water along there, I can't, I can tell you along in 3 and 4, and there is water west of there in mine, there is plenty of water all through there.

Q. Now, I call your attention to the North Half of the Southwest Quarter in the Northwest Quarter of Section [187] 31, Township 3 South, of Range 32, Range 26 East, have you located that area?

A. Is that 31 you say?

Q. Of Section 31, yes?

A. That is lots, wasn't it?

Q. Well, it is described here, they are described both as Lots 2 and 3, and the North Half of the Southwest Quarter, and the Northwest Quarter of Section 31, can you locate that? A. Yes.

Q. And where in relation to these areas is your land located?

A. On the west side of it, the reservation fence, and on the east, south and north of it, on my leases, this piece of land sets up on a hill, and the only

(Testimony of R. B. Fraser.)

thing I can go up there—is in a breeze, it gets too hot, it is rough and hilly up there, and it is not fenced out, it is still in there, the same way, it is not fenced away from the rest of my lease.

Q. Now, I refer to the West Half and the Southeast Quarter of Section 34, in Township 3 South, of Range 26, can you locate those on the Exhibit?

A. What is that you say?

Q. The West Half and Southeast Quarter of Section 34.

A. It is here, do you want me to locate here you say?

Q. Well, where in relation to this land description is your land located? [188]

A. I have the North Half of 33 adjoining it practically, there is a little piece, a little offset there in the north, the Northeast Quarter of Section 33, at that quarter section, that sets up into, into 28, and about part way, it is an offset quarter section.

Q. And where else in there do you have land leased or——

A. And I have adjoining, I have 23, I have some more in 28, I have the Northwest Quarter of 28, and practically all of 29, and part of the south part, most, the south, the south of the South Half of 30, and also the north, the Northeast Quarter of the Southwest Quarter of Section 30, and as in 31, I am all around that land you mentioned, the time before, I am all around that, 31.

Q. Is there any fencing in this, between this

(Testimony of R. B. Fraser.)

land, the alleged trespass and your land, was there in January 30th of 1952?

A. Which are you talking about?

Q. Between your land and the West Half and the Southeast Quarter of Section 34?

A. No, sir.

Q. Could you describe, do you recall the fencing in that area in January of 1952, if any?

A. Well, there was a—some grain land that was south of this, these sections you are talking about, and that was fenced, there is a north fence between them [189] and the rest of it, but practically all the land we have been talking about so far, there was no fence between it, it was part of it Cormier's, and part of it mine, and no fence apart, they run cattle in there and so did I.

Q. Now, I call your attention to the Southeast Quarter of Section 32, and the South Half of the South Half of the Northeast Quarter, and the South Half of Section 33, this land is located in the very same vicinity; isn't that correct?

A. Yes.

Q. And do you know what the fencing conditions were on January 30th, 1952, in this area?

A. Well, there wasn't any fences, I was talking about previously, that is the same territory you was talking about before.

Q. And is it not true, Mr. Fraser, that your cattle put on your own land or Mr. Cormier's cattle put on his land, either the Cormier brothers or any cattle that are put on any of this land, can travel

(Testimony of R. B. Fraser.)

back and forth from one area to the other, is that correct? A. That is right.

Q. Now, where is the water located, the water holes located in this area, if any?

A. Well, there is water holes all west of the spring wells, west up in this 30 and—— [190]

Q. Could you locate it as close as possible, if need be, use your plat book, but we would like you to locate those?

A. Well, there is a spring runs in the South Half of the South Half of 30, and there is spring runs on 23, the North Half, the North Half, or 29, pardon me, 29; there is spring both on the north and the south, towards ravines in both of them, and then there is some other springs down here in the dam, I think, down in 6, springs in through there, and through, I don't know, this isn't labeled, but it is 6.

Q. That is in—— A. Seven.

Q. 4 South of 26?

A. Well, there is some springs in there, there is lots of water, and springs and dams all through both the Cormier's and my own, my own leases.

Q. Since January 30th of 1952, has this area been fenced by anybody?

A. Since then you say?

Q. Yes. A. Yes, sir; part of it.

Q. Do you know who fenced it?

A. I fenced most of it.

Q. And could you——

A. Between us, although Cormiers fenced off a

(Testimony of R. B. Fraser.)

section there, I would think that is section 32. [191]

Q. Could you describe where this fence, the fence that you built, runs?

A. I run a fence from between 4 and 5, North and South.

Q. What township and range? A. What?

Q. What township and range?

A. I run a fence on the, on the east side of Section 5, east and west, and then Cormier took a fence from the—from there where I left off and built a fence between 32 and 33, and I went up half a mile between 28 and 29, and back over to the center of 29 and north again to the line fence. At the time they built that east fence between 32 and 33, they also built a fence clear around that section, and that is Section 32, but left my—I have got a quarter, practically the North Half of Section 33, they left that out in there, and it still is in there, they are using that now, that is part of my—that is my lease, but it has been there and they have been using it ever since.

Q. In other words, that piece of ground is in the same position as that land in Section 31, is that right?

A. There is more of it and better grass.

Q. Are you familiar with the fence quarters in this area? A. Sir?

Q. Are you familiar with the section corners and the [192] quarter corners in this area, have you been in this area before? A. I have.

(Testimony of R. B. Fraser.)

Q. Have you had occasion to locate any of these corners?

A. I tried to, I didn't have any success and I have got Lillis, the engineer, and he worked out there several days to get a line through, he was unable to find corners that were correct, and in fact after he laid the line through——

Mr. Galles: Object to that as hearsay.

The Court: Objection sustained.

A. I was with him, sir.

Mr. Galles: Your Honor, rather than take the time to have the fences described in Unit 19, we will agree that there are fences on certain parts of it, that the fencing does not prevent cattle from going to one part and another, and getting on other land in the area, that it is similar to that of 22, about which Mr. Fraser testified, if that is agreeable to Mr. Jones.

Mr. Jones: Yes.

Mr. Galles: And cattle can go back and forth without restriction in certain parts of the unit because of lack of fencing, and in other parts there is some fencing. [193]

The Court: That is agreeable, Mr. Jones?

Mr. Jones: That is agreeable with me, your Honor.

Q. I hand you Plaintiff's Exhibit No. 3, which covers land in Township 1 South, Range 27 East, and ask you if that instrument, with its legend, that legend portrays the ownership and the leases and holder of permits in this area in 19, since 1954?

(Testimony of R. B. Fraser.)

A. Well, it is, part of it, right, I don't know just how, I don't know whether this means up here, what is the effect of it, I had a competent lease on it.

Q. In other words, you had a competent lease on this yellow area circled with a "C" enclosed?

A. That is right.

Q. And that portrays where your leased land was located, is that correct? A. Yes.

Q. And then that—that is green——

A. The green land is deeded land.

Q. And that is allotment 1452, and 1322?

A. Yes, sir.

Q. And before you owned it, obtained a deed from it, did you have it leased? A. Yes, sir.

Q. And how about Unit 3430?

A. Same way with 3430, we had a lease on it and then bought it. [194]

Q. And Unit 1808? A. Same way, sir.

Q. And Unit 2177?

A. Same way, it is deeded, but it was leased before it was deeded, there is some other land down below here and I had leased along with this unit, and went on down to 227, but I guess——

Q. Will you describe where the water holes are located in, reservoirs and water holes are located in this, on this plat with which involve Unit 19?

A. Yes, Section 23, which is right north of the present Unit 19, has a big water hole and also has a windmill and pump, and a spring, right along the road as you go out on the Hardin road, that windmill and spring is just above, the windmill and

(Testimony of R. B. Fraser.)

the dam is just a little below the windmill, and then on the other side of Unit 19, and Section 34, there is a good sized dam there, and some springs, and, or in the south part of 34, and then there is also water usually from an irrigation ditch running through the East Half of the East Half of Section 35, which also adjoins Unit 19, cattle water a good deal at that irrigation as it runs practically the year around and the cattle—and east and south and north parts there, come there, and the ones on the east side come to the big dam and that is on the south end of the—or the south of the unit. [195]

Q. Is there any watering places located on Unit 19, as it now exists?

A. There is a small dam or mud hole, sometimes when it rains real hard there will be water in it a few days, but that is the only place, and that is in the Northeast Corner of Section 22, and it would be necessary for cattle to go pretty near three miles to get to it from the east end of the unit, of 19.

Q. Where is the nearest water hole that the Cormiers' cattle can go to obtain water without, outside of your land, where would they have to go to get water?

A. There isn't any.

Q. Mr. Fraser, do you recall Mr. Powers' testimony in reference to over stocking range Unit No. 19 on November 4th, 1954, in reference to some horses being on this, within this unit?

A. Yes, sir.

Q. Do you know whose horses these were?

A. Frankly, very little territory or leases that

(Testimony of R. B. Fraser.)

I have on the reservation, that isn't filled with horses one time or another belonging to the Indians, and there is no way that I know of to keep them out, and I think most of these were Indian horses that were mentioned by, they might have been two or three saddle horses or something like that belonging to me, but practically all is outside horses.

Q. How long have you lived on the reservation or leased land on the reservation, Mr. Fraser? [196]

A. Since '34.

Q. And since that time you are well acquainted with the practice as to grazing horses on the reservation are you? A. Yes, sir.

Q. Will you tell us what that practice has been, both as to Indians and whites?

Mr. Galles: Object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Well, we have all got to get along with the Indians who are, after all, own the land. We are all forced to graze their horses more or less, they have lots of horses and they don't use them very much, and they let them run where they will find good grazing. I have been, I have pastured hundreds of horses since I have been on the reservation and I haven't made any big holler about it. As a matter of fact, the Carbon County units last fall rounded up a bunch of Indian horses and tried to get them to take them, so it isn't just one lessee, it is all of us are under the same problem with horses.

Q. Mr. Fraser, do you recall the—the statement

(Testimony of R. B. Fraser.)

of Mr. Powers with reference to over stocking Range Unit 19 on November 4th, 1954, with reference to 196 cattle and 95 calves, being found within this unit?

A. I remember hearing him, yes. [197]

Q. And do you know whether or not this was the number of cattle in there?

A. Well, this is a distribution center for me, I have had thousands of acres besides this, we run on, and we have corrals there and it is close to town where we ship them, and when we brand, we have to have a place where we can round up and brand them, take them out to different pastures and the same way when we feed them in the fall or send them to market, I have run quite a lot of cattle in the beet fields down at Hysham, and I bring them into this, brought them into this territory because I have a good set of corrals and good buildings, or good facilities to take care of them, and it isn't so far to haul the horses, it is on a hard road. I mean haul the cattle, we can take our trucks and haul them where they go, so in the fall every year, like every other lessee on the reservation, I congregate my stuff at shipping time. It is pretty hard for me to tell just how many, because we don't keep track, we kept bunching them in and shipping them out as fast as we can figure out where they go to market, or beet tops or go back to the fields after taking the calves off of them.

Q. Are these cattle in there during all of the whole year of 1954?

A. No, sir. [198]

(Testimony of R. B. Fraser.)

Q. I call your attention to the testimony of Mr. Clark C. Stanton, in reference to over stocking of this Unit 19, on the 24th day of May, 1954, and in which we stated, he counted 182 head of cattle and 32 horses within this unit. Do you know who those horses, 32 horses, belonged to?

A. I don't, but I would say probably most of them belonged to the Indians, in May is the time of year when we brand and get our cattle together to cut out bunches to take to the different pastures with bulls, and a little later on we have to get them a bunch at one place where we can brand them, so in May and June we are generally, have to congregate to brand, and as I say, in November, why that is the time we get them to go to ship them, and get rid of them, this has been my gathering spot, and it hasn't been unusual, I have been on the reservation since '34, and there is Speer siding and Aberdeen siding and Benteen siding, all these shipping places down on the reservation here, and everybody ships out of them, and I don't never heard of any of them being penalized because people ship out of any certain spots. Mr. Snyder was a big sheep man when I first came here——

Mr. Galles: Object to this as not being responsive to the question and immaterial.

The Court: Objection sustained. [199]

Q. Now, in reference to these 182 cattle that Mr. Stanton alleged were located in this unit on the 24th day of May, 1954, do you know whether or

(Testimony of R. B. Fraser.)

not those cattle were left on there all year, or when they were on, and when they were put in there, and when they were taken off?

A. They never took us a month to get them, to get the majority of them branded and sent away. They would always be a few stragglers left to take out, to send to different places that we didn't get them all out right away, but I never run the year around, it was one continuous grazing, part of my practice is to run part of the year there as far as the—to gather them, that was my main use of this particular land.

Q. Wasn't there times during the year that you had, you didn't have any cattle in this unit, Mr. Fraser?

A. Many times, very seldom had any there in the winter time, from January 1st on.

Q. Mr. Fraser, you recall the testimony here in reference to alleged violations by you after, from and after December 24th, 1955, of 59 cattle in Unit No. 19, allegedly found in the Northeast Quarter of the Northeast Quarter of Section 35, and the Southeast Quarter of the Northeast Quarter of Section 26, and the Northwest Quarter of the Northwest Quarter of Section 26, and the South Half of the Southeast Quarter [200] of Section 27; do you know whether or not these were your cattle found in that area?

A. It is about the time of the year where possibly we kept a rider with them as much as possible, seeing they didn't do any fencing, and it

(Testimony of R. B. Fraser.)

is possible that that is right, adjoining this deeded land and leased land of mine, and it is possible some of them got over on the Unit 19. They wouldn't stay there because there is no water there.

Q. What have you done since the issuing of the restraining order heretofore made, in attempting to keep your cattle on your own land, if any?

A. I built a fence in Section 35, on the south and west side of the Northeast Quarter of the Northeast Quarter, and from that point, went a mile west between Section 26 and Section 35, and since that time I put an electric fence that was a good, four-wire fence, and at that time I put electric fence the rest of the way down, bordering my, on the north, from, went down to the north side of 34, until my land went north again, and then went north to the rims, with the electric fence, to keep my cattle from getting on Unit 19, and took everything away from the other side that was over by the windmill, and dam and spring over there, we took everything out of that side, haven't had anything in there all spring.

Q. I call your attention to the alleged trespass on [201] March 27th, 1957, of 358 head of cattle, will you state what took place at that time?

A. Yes, the men went out to the range, I was over in, I can tell you exactly, the range we have in 3 and 4, 26, and roundup the cattle that were in there, and went as near as possible in a line to get to my ranges and corrals down in 4, 26, I have got some other land and gathering places in Section

(Testimony of R. B. Fraser.)

22 of 4, 26, they went through, that's about—oh, it is probably two or three or three miles from the edge of my range to the north of this, and my instructions were not to damage any grain or damage anything and be sure they went without causing any trouble in there.

Q. Do you know the condition of the permitted land in Range Unit 19, at the time your permit was cancelled? A. Yes, sir.

Q. What was that condition? A. Good.

Q. Was the condition any different than it was when you took over the unit?

A. It was better, when I took it over, there had been a sheep man ahead of me.

Q. Do you know where these cattle that were allegedly trespassing on January 30th, 1952, in Sections 3 and 4 in Township 4 South, of Range 26, do you know where [202] they were, what area they were turned into?

A. They were; yes, sir, I do.

Q. Where were they?

A. They were turned into 4, 26, into section, north of the north part of Section 7 and 6, and then the East Half of the Northwest Quarter of Section 6, there was a gate there, they were probably turned into that gate because that is the nearest to my other land, and they were taken up there from.

Q. And whose land is that, was that at that time? A. That was my leased land.

Mr. Jones: You may examine.

(Testimony of R. B. Fraser.)

Cross-Examination

By Mr. Galles:

Q. Mr. Fraser, you said you dealt your sheep to a man by the name of Jaffreys for his ranch?

A. I said I dealt with him.

Q. You dealt with him? A. Yes.

Q. Did you transfer your sheep to him and did he transfer his land to you?

A. It was a trade between us, yes.

Q. With title passing?

A. Well, I don't know whether we both got them at the same time or not, but it gradually ended up with everything passing, it was several years after the trade was made, we finally ended the deal, but it was a [203] deal between us for quite a few years.

Q. And what you say, is that he ended up with the sheep and you ended up with the ranch?

A. That is right.

Q. Did you get title to that ranch?

A. Yes, sir.

Q. Is that recorded over here in Yellowstone County, that transfer from Jaffreys to you?

A. I don't know.

Q. Well, did you get a deed?

A. Well, I sold it to another man, so I got the deed to it all right.

Q. You got a deed from Jaffreys to the Jaffrey land and then you sold it to another man?

A. That is right.

Q. Who is the other man?

(Testimony of R. B. Fraser.)

A. A fellow by the name of Plowman.

Q. And then did you execute a deed to Plowman?
A. Yes, sir.

Q. When was that?

A. I think that was sold on a contract, I can't tell you, I can't go back, I haven't got my records with me, it is done through the office of course.

Q. You do have records of that in your office?

A. We do have records of it, and Plowman now owns it, he finally, it was on a contract to start with, but he paid up and got possession now. [204]

Q. Where is Mr. Plowman, does he live out in that area now?

A. I don't know, I haven't seen him for several years, I don't know where he is.

Q. Well do you know whether he still owns it or not?

A. I haven't checked the records, I don't know, I haven't any, any curiosity.

Q. Do you have a copy of that contract for deed that you entered into with Jaffreys?

A. I don't know.

Q. You said you had some records?

A. Well, I said I know I can find out what the records, how we dealt, but I don't know if I got a copy of it or not, because Jaffreys, after we got all settled up, and that's all there is to it, I don't know whether we kept them records after that or not, but if you want to check it, you can find I sold it to Plowman, I think those would be late enough so you could find them.

(Testimony of R. B. Fraser.)

Q. Where would that be?

A. Well, I imagine that would be in the courthouse, it would show a deed from me to Plowman.

Q. Well, where is Mr. Jaffreys now?

A. I don't know, he died quite a few years ago.

Q. He died? A. Yes.

Q. Was he married? A. Yes. [205]

Q. Where is Mrs. Jaffreys?

A. I don't know, Mr. Jaffreys always done his own business and made a trip with me to Canada, and he was a very close friend of mine at the time.

Q. What records do you have of that transaction at your office?

A. I don't know whether I have any or not, because that has been a lot of years ago, and I have moved since then, we had to destroy a lot of records when I moved from, at that time I guess I was on First Avenue down about 32nd, and I moved to this other smaller place here, and I had to clean up what I didn't have, and now I am in another garage, so these records multiply, I don't suppose we keep things that aren't don't have to be kept for Uncle Sam or somebody.

Q. Do you know when you sold the place to Plowman? A. No.

Q. Well, can you estimate?

A. I don't know, I suppose you can find it on the records if you want to know, if it is important, you can find it in the courthouse.

Q. Well, Mr. Fraser, you were the one that said you traded the sheep to Jaffreys, and what I am

(Testimony of R. B. Fraser.)

trying to find out is when you did that, and the records should show, you should have some records to show it, and [206] that is what we would like to see, now do you think you have some records?

A. I made the—I didn't buy any sheep until I was mixed up with Jaffreys, in the deal frankly, because I didn't know anything about sheep, and he took them over on a deal to start with, that is how I happened to buy the sheep to start with, now I don't know what year it was, I can't tell you the year that it was.

Q. Well, you said it was the early part of the 40's?

A. I thought, I would say it was in the early 40's.

Q. Well now, when you bought the sheep, were they assessed for tax purposes in Yellowstone County or Big Horn County?

A. I don't know, I can't tell you that, but I don't think it is in Yellowstone County because I don't think Jaffrey's place is in Yellowstone, I don't believe.

Q. Who was your bookkeeper at the time you operated this ranch with sheep in the early 40's?

A. Well, I have got the same bookkeeper I have had for a long time.

Q. And did you account for the sheep through the books of your business?

A. I don't know, I can't tell you, my main bookkeeper is in California now, I have got a work girl for me down there, but the main bookkeeper is the

(Testimony of R. B. Fraser.)

controller for Townsend and Company in San Diego, and he could probably tell you where it is, but I didn't think it [207] was necessary, so I have not checked or tried to check up on it at all.

Q. Well, when you say that you didn't buy sheep until you met Jaffreys, is that what you said?

A. That is right.

Q. Well, were you in partnership with Jaffreys on the sheep?

A. He was going to run the sheep for me when I got them, that is what caused me to buy them, that I had somebody to look after them.

Q. So that is the arrangement you had, it was sort of an operating agreement, you bought the sheep and he ran them?

A. And then ended up with him taking the sheep and me taking his place, I know he was mixed up in a farm there too, he had some leases on some Indian land that he turned over to me.

Q. Was it an even trade, the sheep for the Jaffrey's ranch?

A. Well, I told you I don't keep books in my head, sir.

Q. Well, do you have some records some place that would show whether you received some money or paid him some additional money?

A. I don't know what records are left of it, because that happened a long time ago, whether we still have them or not, I already said I don't remember, I don't know if he, or if we, got them or [208] not.

(Testimony of R. B. Fraser.)

Q. Can you go look and find out if you have any of them?

A. I could look, nothing to keep me from that, but that isn't the problem to do overnight, we have a lot of records down there, and to try to go through these records to find something——

Q. How long would it take you to do that?

A. I wouldn't want to say, I don't know, I don't know personally where they are.

Mr. Galles: Your Honor, it would seem to me that this is important enough that this witness should be required to find what records he has if there is some question about whether he had title to the sheep on the 31st day of December, 1943. Now I don't want to delay the trial for the purpose of his going down at this time to look, and I don't know what to suggest to the court or counsel, but I believe it is material.

The Court: Of course, it goes primarily to the weight of the evidence I would think. Mr. Jones, do you desire to make any check of the records?

Mr. Jones: Well, what did you say, your Honor?

The Court: I was checking with you to see if you desired to check the records and present any further proof, I think this is [209] primarily a question of the weight of the evidence, I don't know if there is any requirement that the court could require anything further.

(Colloquy between court and counsel.)

The Court: I think it might be well to proceed,

(Testimony of R. B. Fraser.)

and the court will defer ruling on request until after it is determined whether Mrs. Jaffreys will be here.

Q. I believe that you stated Mr. Westburg did work for you at one period of time in connection with your sheep, is that right?

A. He was a shepherd and was herding sheep when I bought them, and he came with the sheep.

Q. Who did you buy the sheep from?

A. I didn't buy them from Westburg.

Q. No, I asked you who you bought them from?

A. O'Brien.

Q. Where? A. In Judith Basin County.

Q. And then the sheep were shipped down to this area? A. Yes.

Q. To the Crow area? A. That is right.

Q. And Mr. Westburg did work for you though after you acquired those sheep? [210]

A. He looked after the sheep awhile.

Q. And you paid him?

A. The shepherd I don't know, how we paid him on the thing, but I imagine he got his money.

Q. Well, you mean you don't recall whether you employed him and paid him or not?

A. I imagine we had a shepherd working for us, I don't know whether, just how long he worked or what other shepherd worked, or not, but you have got to have shepherders with sheep.

Q. And you don't remember whether it was Westburg, or do you remember that you did hire, have Westburg herd sheep for you?

(Testimony of R. B. Fraser.)

A. I say he come down with the sheep, I don't know how long he stayed with me, I can't say as to that.

Q. Well, can you answer this yes or no, did Mr. Westburg work for you herding sheep in the early 40's?

A. Well, when he came down with the sheep, he was working for me because I bought the sheep to start with, and then I don't know how Jaffrey and I figured it out, because Jaffrey was looking after them and telling him what to do, and just how the payment was made, whether it was made through us and charged to Jaffrey or how it was done, I don't know.

Q. Well, did you own the sheep or did you and Jaffreys together own them?

A. I bought them to start with and I made a deal with [211] Jaffreys on the thing on the sheep.

Q. Yes, and that deal was what?

A. He was, went in on the sheep deal and I went in on the, took his ranch from him, that was the size of it, and afterwards the ranch was sold to Plowman.

Q. Well now, before you took over Jaffrey's ranch, did Jaffreys have anything to do with the sheep?

A. When do you think I took over the ranch?

Q. That is what I am asking you?

A. Well, I told you in the early 40's, and he was with me on the sheep until the time I got them

(Testimony of R. B. Fraser.)

at the time, that is the reason I got them, because he went in on the sheep.

Q. You mean as soon as you got the sheep, you made the deal with Jaffreys as to his ranch?

A. I can't go back and tell you which is first, I got acquainted with Jaffreys, and he knew all about sheep and he wanted to run sheep, and so I traded these sheep in order to make a deal with him on the ranch, frankly, I don't know, it has been a long time, and a lot of water run under the bridge since then, and I have had a lot of business and I can't quote out of my head and turn it on about one day or week or anything, my memory isn't that good.

Q. I believe you stated you don't know during what period Westburg worked for you, isn't that right? [212]

A. I said I don't know how long he worked, how long before Jaffreys took over, I don't know just how long, no.

Q. You don't know when Westburg started to work for you, and you don't know when he quit working for you?

A. I can't tell you when I bought the sheep.

Q. I can understand why you wouldn't remember, but I want you to answer my question, if you will please, do you remember when Westburg started to work for you?

A. What do you mean?

Q. Do you remember the date that Westburg started to work for you?

(Testimony of R. B. Fraser.)

A. No, because that is when I bought the sheep I told you, I can't remember just when I bought the sheep.

Q. That is final, I want you to, all I want you to do is answer the question I ask, Mr. Fraser, and I am not trying to trick you into anything. Now, I want to know if you know when Westburg last worked for you, the date?

A. I have already, if you will go back a little, you will find that I remember this, that I told you once I didn't remember.

Q. All right, well I want a simple yes or no, without a speech connected with it if possible?

A. All right, I have told you.

Q. Then you don't know whether Westburg was working for [213] you on December 31st, 1943, or not, do you? A. He was not.

Q. How do you know that?

A. Because Jaffreys was handling the sheep.

Q. How do you know he was?

A. This man, Westburg, advised you that Jaffrey was looking after the sheep.

Q. Well, that is what you say, he wasn't working for you because Jaffrey said——

A. Jaffreys was looking after the sheep——

Q. And that is the only reason you say he wasn't working for you, Westburg himself said that on the stand, is that correct?

A. I am not going, I am not going to tell you what I don't know, what I can't remember.

Q. Well that is what I am trying to find out, is

(Testimony of R. B. Fraser.)

when you said, Westburg was not working for you on December 31st, 1943; I wondered if you remembered or whether you were saying it because Westburg said it?

A. It doesn't make any difference to me, because the sheep weren't trespassing anyhow, I have talked to Robert Yellowtail and told him about these, Crawford and I changing grass, and so they didn't do anything about the sheep at the time, and he decided it was all right, because we made a deal to do that, and——

Q. As I understand—— [214]

A. (Continuing): For your information, also, the other outfit that had that other lease that they talked about, I can't remember the other county up there, they had some of my leases in their range, and we traded grass also, so there wasn't any, there wasn't any complaint from them.

Q. Do you recall the testimony of Clem Cormier about his finding 821 sheep on some land on or about June 12th, 1945, branded with the Circle F, do you recall Clem testifying to that?

A. No, I don't know as I did, I will have to look here.

Q. Well, I can tell you, I believe that Mr. Cormier did testify when he was on the stand he observed in Sections 12 and 13, Township 4 South, Range 25 East, about 821 head of cattle with the brand Circle F?

A. Sheep, you mean?

Q. Sheep, yes.

(Testimony of R. B. Fraser.)

A. That is the land I tell you that was in Crawfords.

Q. All right now, do you recall having gone to the Indian office, I mean the Bureau of Indian Affairs when it was up in this building, and paying some eight hundred and odd dollars, some eight hundred odd dollars as a result of the demand for penalty, based on this count?

A. No, I don't.

Q. You don't recall? A. No sir. [215]

Q. I believe you said in your testimony some place along the line that there were many Cormiers' cattle that had grazed back and forth from his land to your land just as yours grazed back and forth from your land to their land, is that, does that fairly summarize what you said?

A. That is right.

Q. Did you ever complain to anyone about the Cormier cattle being on your land when you found them grazing on your land?

A. I didn't get much satisfaction.

Q. I asked you if you complained?

A. Yes.

Q. To whom did you complain?

A. I complained to the gentleman that done the testifying, Mr. Powers.

Q. Mr. Powers, when was that?

A. I imagine about the same time, because he told me that he would get Cormiers together with me, if I would, if I would joint with them and try

(Testimony of R. B. Fraser.)

to block the land out, and I told him I would go anytime.

Q. But that wouldn't have to be a matter of agreement between you and the Cormiers?

A. He said he would try to get them together and work it out, they were using some 3,000 acres of mine over in 3, 28, for five years, I didn't get [216] any trespassing on them, in 3, five years, and no one used it but them. I have got a fence on it now, and when I went over to fence it, I even found they had their cattle on it.

Q. Did you complain about that?

A. I didn't get any, nobody over trespassed anything from me.

Q. Well, did you make a formal complaint to the Agency office at Crow Agency?

A. I haven't gone and looked you up and got you to write out any what you call—all I have told Powers the trouble I have had, and he agreed that he would try to get Cormiers together with me and block it out, block out our land.

Q. Did you ever call Mr. Powers and tell him, could you come out here, now you can count some of Cormiers' cattle on my land, did you ever, were you ever that specific about your complaints?

A. I was given to understand frankly——

Q. No, could you answer that yes or no?

A. I can't remember whether I ever called him up. I have talked to him a number of times about it.

Q. Now with reference to the over-stocking tes-

(Testimony of R. B. Fraser.)

timony of Mr. Powers, with reference to November 4th, 1954, and Mr. Stanton on May 24th, of 1954, I believe you explained why you had an excess number of cattle at that time; did you hear Mr. Powers' testimony under [217] cross-examination by your counsel, that on July 26th, he had reported to him that there was 183 head of cattle grazing on the land permitted to you; now, do you recall his testifying to that, I think he said Mr. Pilgeram—

A. I think he testified from a letter or something, and probably to the best I can say as to that, that has been our distribution point, and they could have been stuff in there for a day or two while it is being distributed and sent out to different places.

Q. But at least you heard him testify that there were substantially the same number of cattle in there on May and July, and Mr. Stanton said about the same number in on November?

A. Well, they weren't the same number of cattle, they weren't the same cattle even, because we never left them in there, but that was a distribution point for me and I had thousands of acres of land besides, so my lease, I had lease enough to cover everything, in fact of matter is, I had never used all the grass that I have out there, a single year yet. Even last year I had this range in 3, 28, and never had a head on it.

Q. Referring to Plaintiff's Exhibit No. 9, that is your signature, is it not, on the back of the first page of the document, called 'Grazing Permit'?

A. It looks like it. [218]

(Testimony of R. B. Fraser.)

Q. Well, do you want to look closely?

A. I'd say it looks like it.

Q. Well, do you recall signing this in 1950?

A. I imagine I did, it looks like my signature.

Q. And, likewise, the additional stipulations, is that your signature? A. That looks like it.

Q. And on the cash penal bond?

A. It looks like my signature.

Q. And, again, on the document called 'Power of Attorney' is that your signature?

A. It looks like it.

Q. And on the 'Modification of Grazing Permit'? A. Yes.

Q. These documents comprise the contract under which you grazed and stocked cattle during 1954, in particular, about which we have been testifying, about which you have heard evidence on May, July and November over-stockings, this is the document under which you had authority to have cattle on that land, is that correct?

A. Well, I don't understand it a little bit, maybe you can explain it to me, now——

Q. You mean you don't understand my question?

A. I don't understand this, I have deeded land, that is in what you call the same permit?

Q. Yes. [219]

A. How can you permit my deeded land, tell me what I have got to have on there?

Q. Well, that is the matter of law, the court will interpret that, all I want to get from you is that this is the agreement that you had on which you ran

(Testimony of R. B. Fraser.)

cattle on Unit 19, in 19, from 1952—until it was cancelled?

A. I haven't read it, but I imagine it looks like my signature.

Mr. Galles: That is all.

Mr. Jones: That is all.

(There being no further questions, the witness was excused.)

(Whereupon a short recess was here taken; court resumed pursuant to recess.)

ROBERT YELLOWTAIL

called as witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Jones:

Q. How old are you, Mr. Yellowtail?

A. I will be 68 August the 4th.

Q. And how long have you lived on the Crow Reservation?

All that time, with the exception of eight to ten years in California, while I was at school.

Q. You were born and raised—

A. Oh yes.

Q. On the reservation? A. (No reply.)

Q. What is your present occupation?

A. I am a farmer and rancher.

Q. Do you run cattle on the reservation at the present time? A. Yes.

(Testimony of Robert Yellowtail.)

Q. How many cattle are you running on the reservation?

A. With my family, we have probably 600 head of cows and calves, and close to 100 head of quarter horses, mares and colts, and—

Q. And how long have you run livestock on the reservation?

A. All during my adult life, and from the time I was about 20 years old I presume.

Q. In other words, you have spent your entire life as a cattleman, is that correct? [221]

A. Yes.

Q. And raising cattle on the reservation?

A. Yes.

Q. And you have lived on this reservation for 68 years, is that right?

A. Eight years, or six years, after it was created.

Q. Were you the Superintendent of the Crow Reservation at one time?

A. Yes, from August 1st, 1934, to April 1st, 1945.

Q. And during that time you were also involved in the leasing operations on the reservation, is that correct?

A. Yes, as Superintendent I had charge of that, direct charge, subject of course to the superior offices at Washington and the regional office here.

Q. Are you acquainted with the conservation practices on the reservation at this time?

A. Yes, I saw that thing bud out and grow out, and up to what it is today.

(Testimony of Robert Yellowtail.)

Q. And will you tell this court from your observation what you have observed as to the grazing and conservation of the range on the Crow Reservation from the time you can remember?

Mr. Galles: Object to it as being immaterial, I don't see the purpose.

(Argument to the court by counsel.) [222]

Mr. Jones: In any event, we would object on the further ground that no foundation has been laid.

The Court: Well now, it is the court's recollection that Mr. Powers testified and answered substantially the same question with respect to the conservation practices.

Mr. Jones: That is right.

Mr. Galles: Yes, I believe that is correct.

The Court: I think I will let the witness answer, and the objection is overruled.

A. Mr. Powers testified, when he was on the stand, as has just been recited, as an expert from the University of Montana, on range conservation and practices; those things were unknown, Mr. United States Attorney, when I was a boy. I remember very distinctly back to President McKinley's time, on up, and as I stated a while ago, there was absolutely no, no control in Indian Affairs, administration of range practices control. To substantiate that statement, I point you to Charlie Bear, the biggest sheepman in Montana; Charlie Bear's sheep roamed over this same area that you

(Testimony of Robert Yellowtail.)

are talking about, with no control, no stipulation, no range control, no practices of any kind. The Ray Brothers' sheep [223] up there were on this Northern end as a sheep company; the Oliver Eber Sheep Company, the Lee Simonson Sheep, the 7 Bar 7, Paul McCormick's cattle were in grazing on this area with no range control, and when Mr. Powers testified here as an expert from the Montana University Conservation School, up here, that those rangers, that kind of action is permanent, it injured the range, we have only to go back just a few years when I took charge at Crow Agency in August 1, 1934—when I took charge, I found some of the range in very very bad condition, none of these men, they all worked—these men testifying, with the exception of Mr. Field and Mr. Carter, as Superintendent there—I just want for an example up here so the court will understand, he is of the agency, to the Cheyenne Reservation line, it was under permit or lease, as I recall it now, to Mary B. Morgan, of Sheridan. You will all recall that in 1934 there was a drought in Montana, one of the worst droughts that we have ever witnessed yet. That range was in horrible condition. If leases were up shortly after I was appointed Superintendent, instead of hiring an auctioneer to sell the lands, I and Mr. Nice, the predecessor of Tom Carter, that sits back here, jointly with Mr. Smith, my Chief Clerk then, made the sales. I cried the sales as the auctioneer. [224] I sold a lot of the leases up there for five-year term. When I came to, when I

(Testimony of Robert Yellowtail.)

came to this particular tract, the Mary Morgan tracts of the agency, I just can't recall the unit, but these boys that is sitting back here that worked for me then, can tell the court if you want the unit number, was practically dust, it was a dust bowl; when I cried the sale and tried to sell that particular tract to the prospective bidders that were present, nobody, nobody would look at me in the face when I would point my finger asking various ones, Harvey Cort, Wilkin, everybody down the line, Tschirgi, nobody was interested, because they said the range was ruined. Well the sale was concluded, your Honor, nobody bidding on that, so I went into hauddle with my associate officer, Mr. Capt. George Nice, who was the Regional Officer here in Billings. I said to Mr. Nice, "What shall we do?" "Well," he said, "Bob, you are the Superintendent, you are furnishing the bond to run the Crow Reservation, it is up to you to find somebody that will take this over." A lot of Indians were there without any money. You have what looks like a ruined tract of land, and I said, "I will agree with you." So I called in Harvey Cort from Big Timber, and I said, "Mr. Cort, will you accept this Mary B. Morgan Unit at ten [225] cents, as I recall, ten or eight cents" and he said, "What do you expect me to do with it?" And I said, "Take it, because you are one of our patrons," I am trying to give you a history so it will answer the argument up here, if you don't want me to——

The Court: Cut it down as much as——

(Testimony of Robert Yellowtail.)

A. (Continuing): —I am just about to the end of it.

Q. I would like to have you confine your statements to what you know, rather than what—

A. (Interrupting): —This is what I know, because I was a directing officer, representing the Government in the sale and use of that particular unit and the rest of the units on the Crow Reservation.

Q. If you would eliminate what anybody else told you, it is hearsay.

The Court: That is correct.

A. That will be all right, I understand, so after my plea with Mr. Cort, Mr. Cort said, "All right, I will accept." Of course it is pretty hard to get a buy from it, at least, I will say this, I succeeded in selling that Mary B. Morgan Unit that everybody condemned as dust bowl, useless to Mr. Cort, for the advertised price. Mr. Cort did not use that range the summer of 1934, as I recall it, and he let it go because it was declared a ruined piece of ground and Washington was so advised, and Mr. Nice joined in with me, that it was in bad shape. That [226] particular unit went that summer without any use. That fall we had some rains, the next spring we had a good average season range, that unit came back and Mr. Cort turned his sheep on that that next summer, and has been using it ever since, and today you would never know that range was at one time a dust bowl. So we have, your Honor, we have grass in this Southern Montana

(Testimony of Robert Yellowtail.)

country on the Crow Reservation that has the ability to come back, after terrific use and abuse. The buffalo in the old days had come by the billions from Canada on down, proves that statement. The continued use by various stockmen from the creation of the Crow Reservation, not the creation, but the designation of this part up here as part of the Crow lands in 1880, right after the Custer massacre up there, that Custer war, proves that statement, that successive use without any, but now in '34, Mr. Rhoads and Mr. Scattergoods, as I understand the range stipulations, that you have been talking about here, we entered in a period of control, and then these violations that are now resultant, and we are having actions here in the court to penalize people's use up here is something of very recent, but I merely mention that in answer to the question propounded to me by the attorney here about the abuse. When you come to a stating that these abuses are continuous or permanent, there [227] is no such thing happens. History, history defines that kind of statement, and as he stated to me, he asked me if I was interested in the stock business, and I say yes, only people that have used these ranges over a long period of time as operators can answer that with, can answer that question with some degree of certainty. People that come from the universities, and I don't care where they come from, with theoretical educations from the books, have never had their rump in the saddle or taken the ups and downs of the cow business

(Testimony of Robert Yellowtail.)

from year to year, up there, and are not practical. That has been proven and demonstrated on the Crow Reservation, and regardless of what The Area Office, and its officers there that are smiling in opposition say, their smiles don't make that they say so (witness spitting on the floor).

Q. Mr. Yellowtail, at the time you were Superintendent in the Crow Reservation, what was the policy in reference to adjoining landowner's fencing, if there was such a policy?

Mr. Galles: I will object to that as being immaterial.

The Court: I am going to let him answer under the defense theory, I think it is important and I believe he should be given an opportunity. [228]

A. There is no statute, Congressional action, regulation, or otherwise, that I know of, at least the eleven years that I had charge of Crow Agency, that covers the subject of fencing. That was a matter that was left largely in the hands of the Superintendent under his bond. He, in conjunction, there were no area offices then, Mr. Capt. George Nice, up there, was a regional officer, stayed in this building, to help the Reservation Superintendents in Montana and Wyoming. The question of fencing was a very touchy one; it was an embarrassing one for the administrative officer in charge at Crow Agency. It left him the umpire, it left him the umpire of all these range disputes whenever they came up between a conflicting interest of lessees on the Crow

(Testimony of Park Taylor.)

Q. Now, don't testify as to anything that Dan said, but just whereabouts was it that you had the conversation with Mr. Powers?

A. Well, that was at the gate where we went out of the field.

Q. Do you know what, where that is located as to section and township? A. No, I don't.

Q. When did this take place?

A. Well, it was after we gathered the cattle and started to move them.

Q. What date?

A. Well, I can't remember that, I didn't have the date down.

Q. Do you know about what date it was?

A. I imagine it was in March, I don't remember.

Q. Mr. Taylor, Mr. Powers has testified it was on March 27th, 1957, do you recall whether it was that date or not?

A. That would be correct, I imagine.

Q. Would you repeat, tell us just what the conversation was that you had with Mr.—

A. Well, Mr. Powers was parked just outside the gate, and I rode out and asked him what he wanted, and he said he wanted a count on those cattle, and I [232] said to Mr. Powers, "Are you going, bringing a trespass charge against us"—I said, "If you are, I will take them back up to the corral and haul them. And he said, "No, I am not going to interfere in no way with whatever you are doing, go ahead,"—but he says, "The court advised

(Testimony of Park Taylor.)

me to watch movement on these cattle," and that was—he counted the cattle and I counted them.

Q. How many cattle did you count?

A. I recall my count I think was 358 and he had two or three head more than I did.

Q. Where did you take these cattle?

A. Well, we took them across country down to the ranch on Pryor, it is acrossed grass land all the way, I am not familiar with the sections or lots or allotments.

Mr. Jones: You may examine.

Cross-Examination

By Mr. Galles:

Q. Do you know whether you went across land that was not permitted, leased, or owned by Mr. Fraser?

A. No, I don't, I just took the shortest route out there, wherever we figured the cattle would do, not damage, just across the grass, we kept the cattle moving all of the time.

Mr. Galles: That is all.

(There being no further questions, the witness was excused.) [233]

Mr. Jones: Defendant rests, your Honor. [234]

Rebuttal Testimony

THOMAS L. CARTER

called as a witness on behalf of the Plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Mr. Carter, your name and where you live?

A. Thomas L. Carter, and I live in Minneapolis, Minnesota.

Q. What do you do there?

A. I am employed with the Bureau of Indian Affairs.

Q. How long have you been employed with the Bureau of Indian Affairs?

A. Continuously since about the middle of 1928.

Q. Did you ever have duty in Billings, Montana, with the Bureau of Indian Affairs?

A. Yes; I did.

Q. For what period?

A. From July, 1941, until June of 1956.

Q. Some fifteen years?

A. That is right.

Q. Were you in court when I asked Mr. R. B. Fraser if he recalled ever having paid eight hundred some odd dollars for sheep trespass penalties?

A. Yes; I was.

Q. Did you ever have any dealings with Mr. Fraser with respect to such a matter?

A. Yes; I did.

(Testimony of Thomas L. Carter.)

Q. When and where was that? [235]

A. Some time in 1945, as I remember, was the—I couldn't give you the exact date, but the place was in my office in this building right around the corner here.

Q. What transpired?

A. The boys at Crow had reported a trespass, a sheep trespass, and brought in affidavits which convinced me that there had been a trespass, and I was also advised by the Superintendent at Crow Agency, who was at that time Mr. Warren O'Hara; that a negotiation was under way whereby the Extension people at Crow Agency were purchasing some cattle from Mr. Fraser for Indian loan clients down on the reservation. We had a conference in my office on a Saturday morning, here in this building, with Mr. Fraser and his attorney, who was at that time Mr. Tom Burke. Mr. Warren O'Hara, the Superintendent at that time, was present, and, I believe, that during the conversation that morning that Joe and Clem Cormier came in. My memory is vague as to just why they were in, but at least they were there. We made arrangements to hold up the payment on the voucher for the cattle being purchased from Mr. Fraser pending settlement of the trespass, and I believe that my memory is correct, and that Mr. Fraser then gave us a check in the amount of \$812.00 to cover the trespass on the sheep in order that his voucher could be cleared for payment. We asked him to get that [236] check

(Testimony of Thomas L. Carter.)

certified, which he did, and brought it over and delivered it in my office.

Q. Had a demand been previously been made upon him for that, for that \$812.00?

A. Yes; it had.

Q. And did he object to the payment of it for any reason?

A. He objected, yes; he protested the payment of the amount that was requested on the basis that he had other lands on the reservation which he contended should compensate for trespassing on other people's land, where he had no permission to be.

Q. Did he object for the reason that he did not own the sheep? A. No; not at all.

Mr. Galles: You may examine.

Mr. Jones: No examination.

(There being no further questions, the witness was excused.)

(Whereupon, a short recess was here taken; parties present the same as before.) [237]

MRS. MARGARET JAFFREY

called as a witness on behalf of the Plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Galles:

Q. Will you state your name, please?

A. Margaret Jaffrey.

Q. That is spelled J-a-f-f-r-e-y?

(Testimony of Mrs. Margaret Jaffrey.)

A. Yes, sir.

Q. Where do you live?

A. Edgar, Montana.

Q. Was your—are you a widow?

A. Yes, sir.

Q. Was your husband's name James G. Jaffrey?

A. Yes.

Q. Did you and your husband live on the, on or near the Crow Reservation in the Pryor area at any time? A. Well, near the reservation.

Q. Near? A. Yes.

Q. When did you live there?

A. Well, from 1912 until we sold.

Q. And when did you sell?

A. 1942, I believe.

Q. Do you—to whom did you sell?

A. To Mr. Fraser.

Q. That was your ranch property near the reservation in the Pryor area? [238] A. Yes.

Q. How did he pay you for that sale?

A. In cash.

Q. Did Mr. Fraser ever transfer title to the sheep in payment of title to that ranch?

A. No; not that I know of.

Q. Did you ever, you and your husband, ever purchase any sheep from Mr. Fraser at any time while you lived at your place? A. No.

Mr. Galles: You may examine.

(Testimony of Mrs. Margaret Jaffrey.)

Cross-Examination

By Mr. Jones:

Q. Mrs. Jaffrey, did Mr. Jaffrey work with Mr. Fraser in 1943, do you recall?

A. Yes; he tended sheep camp for him.

Q. Do you know whether or not he had any interest in these sheep in 1943?

A. Not that I am aware of.

Q. Do you know what kind of arrangements were involved between Mr. Jaffrey and Mr. Fraser?

A. Well, I don't know.

Q. Did you take part in his business transactions between Mr. Jaffrey and Mr. Fraser?

A. No; I didn't.

Q. Do you know how much Mr. Fraser paid Mr. Jaffrey for the premises? [239]

A. No; I don't.

Q. You don't know how much he paid?

A. No.

Q. Do you know whether or not it was a contract? A. No; I don't.

Q. Do you know whether or not it was on a deed dedeed to Mr. Fraser or not?

A. I do not know.

Q. Or was it dedeed to Mr. Plowman?

A. No; we didn't sell it to Mr. Plowman.

Q. Did you sell any land to Mr. Plowman?

A. No.

Q. Did you, yourself, receive any of the money

(Testimony of Mrs. Margaret Jaffrey.)

for the sale of the place? A. No.

Q. It all went to Mr. Jaffrey? A. Yes.

Q. Were you and Mr. Jaffrey living on the premises at the time Mr. Fraser, Mr. Jaffrey was working these sheep out there? A. Yes, sir.

Q. You were still living on the premises?

A. Yes.

Q. Do you know whether that was before or after you sold your place?

A. That was after we sold.

Q. It was after you sold the place? [240]

A. Yes.

Q. In other words, Mrs. Jaffrey, you don't know, do you know when the place was paid for?

A. I couldn't tell you right now.

Q. You don't know whether it was paid for at the time that you executed the deed, or not?

A. I could not say.

Q. You couldn't say, you don't know, is that right? A. No; I don't know for sure.

Q. Do you know for sure whether or not it was a cash transaction? A. Yes.

Mr. Galles: Was your answer "yes"?

A. Yes.

Q. What do you mean by "cash," what is your understanding of cash transaction?

A. Well, being paid for in cash.

Q. Being paid for, but yet you don't know when it was paid for?

A. Well, I don't know when the last payment was, if that is what you want.

(Testimony of Mrs. Margaret Jaffrey.)

Q. Oh, in other words, it was paid for over a period of years? A. Yes.

Q. Commencing in 1942?

A. If I remember right, yes.

Q. Did you receive any of the payments? [241]

A. No; I did not have nothing to do with them then.

Q. Do you know whether or not the property was contracted? Was it a contract, or was it, did you give them a deed immediately, or do you know?

A. I don't know.

Q. You don't know? A. No.

Q. In other words, you don't know whether it was on a contract or whether there was a deed given before you received payment or not?

A. No; I don't know.

Q. Do you know how the payments were made? Were they made by check, or by cash, or by what?

A. I didn't see any of them. I suppose they were by check.

Q. In other words, Mr. Jaffrey received all of the payments himself? A. Yes, sir.

Q. And were these payments received after you executed the deed or before, do you know?

A. I don't know.

Q. Do you know whether you executed more than one instrument in reference to this transfer of this property, or not? A. No; I don't.

Q. You don't know?

A. (No reply.) [242]

Q. Did you read the contract at the time you

(Testimony of Mrs. Margaret Jaffrey.)

signed it, or the instrument that you signed transferring the property? A. I guess we did.

Q. What is that?

A. I guess we did, I guess.

Q. But you don't recall?

A. I don't recall what the——

Mr. Jones: I believe that is all.

(There being no further questions, the witness was excused.)

Mr. Galles: The Government rests, your Honor.

Mr. Jones: I think, your Honor, that I, myself, would like the opportunity on this matter to check into it. I think that it is still up in the air as far as I am concerned with reference to these sheep.

The Court: You are wondering whether you want to offer surrebuttal?

Mr. Jones: Well, what I am wondering about is trying to check the records to find out just what did take place.

The Court: Well, the court is going to give both sides an opportunity to check the records.

Mr. Jones: I wonder if we could [243] check the records and report in Monday, would that be——

Mr. Galles: I might state the only record we could find from the Jaffreys to anybody for their land in that area was from the Jaffreys to Plowman, and no record of a deed or contract from the Jaffreys to Mr. Fraser. Now, what other records did you have in mind?

Mr. Jones: That is what I had in reference to—— I haven't——

Mr. Galles: Well, if you wish to check that, why, that would be fine. It might be that Mr. Fraser would have a contract or some instrument.

The Court: That is something you mentioned before, that Mr. Fraser check his own records to see if he does have a contract, or any other written documents that might have some bearing. Well, if it is agreeable to counsel, we could continue the case for that purpose until 2:00 o'clock Monday afternoon, simply for that purpose; is that agreeable?

Mr. Galles: That's fine.

(Whereupon, court recessed at 4:30 o'clock p.m., until the following [244] Monday at 9:30 o'clock a.m.)

July 8th, 1957—2:00 P.M.

(Court resumed pursuant to recess; parties present the same as before.)

The Court: Is there anything further to present?

Mr. Jones: The only thing we could find in checking Mr. Fraser's records is that a contract with Mr. Plowman; that they referred to as to the property, which I think was already shown by the statements of counsel for the United States, that Fraser, or that the property was deeded to Plowman by the Jaffreys, and the only thing we have in line with that is the contract between Fraser and Plowman as to the agreement, that is all; we don't have anything as to, any written evidence as to

Jaffrey's and Fraser's transaction, so I can't see where it is actually of any relative value.

Mr. Galles: That would be our position, that it is not material and relevant to the issue in this case, although the same thing did come up during the Government's last witness when they stated, [245] that was Mrs. Jaffrey, stated that she sold the land to Mr. Fraser, and he later sold it to Plowman.

The Court: This would tend to confirm——

Mr. Galles: That would confirm that, so I don't think it has anything of value to add.

The Court: That is correct. Then you have nothing further, Mr. Galles?

Mr. Galles: No; we have nothing further.

The Court: Well, pursuant to our understanding last Wednesday, it is ordered that the Plaintiff will have twenty days within which to serve and file a brief, and that the Defendants will have twenty days after receipt of Plaintiff's brief within which to serve and file a brief, and that the Plaintiff will have ten days after receipt of Defendants' brief within which to serve and file reply brief. If nothing further, the court will be in recess.

(Whereupon, said case was then taken under advisement by the court, pending the filing of briefs.) [246]

Certified true and correct record.

/s/ ROBERT T. ROGERS,
Court Reporter.

[Endorsed]: Filed February 12, 1958. [247]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO
RECORD ON APPEAL

United States of America,
District of Montana—ss.

I, Dean O. Wood, Clerk of the United States District Court for the District of Montana, do hereby certify that the papers accompanying this certificate, to wit:

Complaint, contained in Judgment Roll.

Amended Answer, contained in Judgment Roll.

Pretrial Order, dated July 2, 1957.

Findings of Fact and Conclusions of Law, contained in Judgment Roll.

Opinion, contained in Judgment Roll.

Judgment, contained in Judgment Roll.

Notice of Appeal by defendants.

Supersedeas Bond on Appeal.

Statement of Points on Appeal, by defendants-appellants.

Motion for Order Extending Time to File and Docket Cause in Appellate Court.

Order Extending Time to File and Docket Record on Appeal.

Designation of Appellants, of contents of record on appeal.

Motion filed May 3, 1956, for Preliminary Injunction.

Order of Court filed May 26, 1956, ruling on motion of defendants, contained in Judgment Roll.

Order of Court filed November 30, 1956,
granting preliminary injunction.

Plaintiff's Notice of Appeal.

Plaintiff's Designation of Additional Por-
tions of Content of Record on Appeal.

and the Reporter's Transcript of Testimony are the original files and records in Civil Action No. 1804, United States of America vs. R. B. Fraser, R. B. Fraser, Inc., a corporation; R. B. Fraser, Jr.; Fraser Livestock Company, a corporation, and Charles Fraser, of record in the above-entitled Court, and designated by the parties as the contents of the record on appeal therein.

I further certify that Defendants' Motion for Dismissal at the close of the plaintiff's evidence, designated as item number 5 in Appellants' Designation, is contained in the Reporter's Transcript of Testimony accompanying this certificate.

I further certify that Plaintiff's Exhibits Nos. 1, 2, 3, 5, 6, 7, 8, 9 and 12, accompanying this certificate, and designated by the parties, are the original exhibits introduced in evidence at the trial of the aforesaid case, and are part of the record on appeal therein.

Witness my hand and the seal of said Court at Billings, Montana, this 19th day of February, 1958.

DEAN O. WOOD,

Clerk as Aforesaid;

By /s/ C. G. KEGEL,

Deputy.

[Endorsed]: No. 15917. United States Court of Appeals for the Ninth Circuit. R. B. Fraser, R. B. Fraser, Inc., a Corporation; R. B. Fraser, Jr.; Fraser Livestock Company, a Corporation, and Charles Fraser, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana.

Filed: February 24, 1958.

Docketed: March 6, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.